

# **EXHIBIT D**

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<p>515</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION</p> <p>4 ePLUS, INC., : 5 Plaintiff, : 6 v. : Civil Action 7 : No. 3:09CV620 8 LAWSON SOFTWARE, INC., : 9 : January 6, 2011 10 Defendant. : 11 -----:</p> <p>12 COMPLETE TRANSCRIPT OF JURY TRIAL 13 BEFORE THE HONORABLE ROBERT E. PAYNE 14 UNITED STATES DISTRICT JUDGE, AND A JURY</p> <p>15 APPEARANCES: 16 Scott L. Robertson, Esq. 17 Jennifer A. Albert, Esq. 18 Michael T. Strapp, Esq. 19 David M. Young, Esq. 20 GOODWIN PROCTOR 21 901 New York Avenue, NW 22 Washington, D.C. 20001 23 Craig T. Merritt, Esq. 24 CHRISTIAN &amp; BARTON 25 909 E. Main Street, Suite 1200 Richmond, VA 23219-3095</p> <p>Counsel for the plaintiff ePlus</p> <p>DIANE J. DAFFRON, RPR OFFICIAL COURT REPORTER UNITED STATES DISTRICT COURT</p>	<p>517</p> <p>1 (The proceedings in this matter commenced at 2 9:20 a.m.)</p> <p>3 THE CLERK: Civil Action No. 3:09CV00620, 4 ePlus, Incorporated v. Lawson Software, Incorporated. 5 Mr. Scott L. Robertson, Mr. Craig T. Merritt, 6 Ms. Jennifer A. Albert, Mr. Michael T. Strapp, and Mr. 7 David M. Young represent the plaintiff. 8 Mr. Daniel W. McDaniel, Mr. Dabney J. Carr, 9 IV, Ms. Kirstin L. Stoll-DeBell, and Mr. William D. 10 Schultz represent the defendant. 11 Are counsel ready to proceed? 12 MR. ROBERTSON: Yes, Your Honor. 13 MR. McDONALD: Yes, Your Honor. 14 THE COURT: All right. Thank you very much. 15 I apologize for keeping you-all waiting this 16 morning. I had a mechanical malfunction that I needed 17 to attend to, and I'm not very mechanically oriented. 18 All right, Mr. Robertson. 19 Dr. Weaver, I remind you you're under the 20 same oath which you took yesterday. 21 THE WITNESS: Yes, Your Honor. 22 BY MR. ROBERTSON: (Continuing) 23 Q Good morning, Dr. Weaver. 24 A Good morning. 25 Q If we could have Plaintiff's Exhibit No. 1 back up</p>
<p>516</p> <p>1 APPEARANCES: (Continuing) 2 Daniel W. McDonald, Esq. 3 Kirstin L. Stoll-DeBell, Esq. 4 William D. Schultz, Esq. 5 MERCHANT &amp; GOULD 6 3200 IDS Center 7 80 South Eighth Street 8 Minneapolis, MN 55402-2215 9 Dabney J. Carr, IV, Esq. 10 TROUTMAN SANDERS 11 Troutman Sanders Building 12 1001 Haxall Point 13 P.O. Box 1122 14 Richmond, VA 23218-1122 15 16 Counsel for the defendant Lawson Software.</p>	<p>518</p> <p>1 on the screen again, the '683 patent, the cover page 2 here. 3 Dr. Weaver, the jurors have seen this exhibit now 4 several times and it's in their jury notebooks. This 5 is at tab 2. Can you just tell us what is the title 6 of the patent? 7 A Electronic Sourcing System and Method. 8 Q Has the Court defined the term "electronic 9 sourcing system"? 10 A Yes, it has. 11 Q What's your understanding as to what that 12 construction is? 13 A In the glossary of claim terms, the "electronic 14 sourcing system" has been defined by the Court to be 15 an electronic system for use by a prospective buyer to 16 locate and find items to purchase from sources, 17 suppliers or vendors. 18 Q What is your understanding of what a source is, 19 sir? 20 A A source would be a vendor or a manufacturer or a 21 distributor. 22 Q In the Court's construction of the claim term 23 "catalog" or "product catalog," how does the Court 24 define what a vendor can be? 25 A The vendor, in the Court's construction, a vendor</p>

<p>575</p> <p>1 the '70s, but the overall components of this system,  2 they haven't been available since the '70s, have they?  3 A I don't think so.  4 Q And you can take known technology and combine it  5 to come up with something new and useful; is that  6 right, Doctor?  7 A Sure.  8 Q The converting icon, I think you talked a little  9 bit about this, but in the Lawson system, how do they  10 perform this functionality of the conversion to find  11 similar, identical or generally equivalent items?  12 A I mentioned these UNSPSC codes. So I'll explain  13 later in detail what they mean, but the gist of it is  14 that by using an 8-digit code, you are drilling down  15 to what's going to be called the commodity level of  16 information. And if multiple items have this same  17 8-digit code, then by the definition of the code they  18 are generally equivalent and substitutable.  19 So the Lawson system uses this UNSPSC code in  20 order to accomplish that task.  21 Q So now that you have discussed sort of the overall  22 functionality of the system in general terms and how  23 it can perform it, you identified various software  24 programs or modules that Lawson offers to do that  25 functionality. Can they be configured in various</p>	<p>577</p> <p>1 procurement systems.  2 Q In your analysis and review of the documents and  3 the deposition testimony, did you make a determination  4 that these foundational software modules were required  5 as part of the Lawson infringing system?  6 A Yes, in the documentation that I read it was very  7 clear that the Lawson system foundation, LSF, had to  8 be installed before you could install the modules of  9 the S3 procurement system. Likewise, the process flow  10 had to be there as well.  11 Q In your report, you called the Lawson system  12 foundation a prerequisite module. What did you mean  13 by that?  14 A The LSF must be there before you can load the  15 modules that are the procurement suite.  16 Q In order to purchase the procurement suite  17 license, the procurement suite, does a customer of  18 Lawson have to license this Lawson system foundation  19 and process flow?  20 A That's what the documentation says.  21 Q Well, I think you touched on the process flow  22 already, but let's take a look, if we can, at the  23 Lawson requisition self service installation guide,  24 which is PX 131. It's in binder 3, Dr. Weaver.  25 Is this document is entitled, "Lawson requisitions</p>
<p>576</p> <p>1 ways?  2 A Yes. Certain modules are required and certain  3 modules are optional.  4 Q Did you prepare a demonstrative to show how these  5 various Lawson procurement S3 modules can be -- these  6 components can build to an infringing system?  7 A Yes, I have several demonstratives that build on  8 each other to illustrate how the software modules  9 build on each other.  10 Q Let's go to the first demonstrative you have. And  11 this one is entitled "Lawson's electronic sourcing  12 systems." And you have a yellow box there. What is  13 that?  14 A So as the name suggests, the platform technology  15 foundation contains the modules that have to be in a  16 functioning Lawson system.  17 Two of those are the Lawson system foundation,  18 which is, again, a set of common computer implemented  19 activities that every software module is going to  20 need. For instance, communication with other modules.  21 The process flow is a module that controls and  22 directs the approval process. So when a requisition  23 comes in, typically a manager approves it, and that  24 approval process is done by the process flow module.  25 So these two are required for all of the S3</p>	<p>578</p> <p>1 Self Service Installation Guide." Did you review this  2 as part of your preparation for your expert report?  3 A Yes, I did.  4 Q So what is this document?  5 A This document explains to the customer how they  6 should go about installing this requisition self  7 service module. We're going to call it the RSS.  8 Q If we could go to bar code 4. It's item 4 of this  9 document. There's a box entitled, "System  10 Requirements" there. Do you see that?  11 A I do.  12 Q Where is the information relevant to the Lawson  13 system foundation here?  14 A It says that the following software and hardware  15 requirements must be met before you install the  16 product. And then in the table below, the first row  17 says, "Lawson system foundation."  18 Q Okay. So before you can install Lawson's  19 requisition self service, one of the requirement  20 components is the Lawson system foundation; is that  21 right?  22 A That's what this says.  23 MR. McDONALD: Your Honor, I object. It's a  24 little unclear at this point because requisition self  25 service is a different module from the ones we were</p>

<p>579</p> <p>1 talking about earlier. So I would object as</p> <p>2 ambiguous.</p> <p>3 MR. ROBERTSON: It's one of the component</p> <p>4 modules that Dr. Weaver has already mentioned. We can</p> <p>5 go back and finish building the blocks if you'd like.</p> <p>6 Q Let's go back to your building components, if we</p> <p>7 could. Then we can circle back.</p> <p>8 So you have got your platform technology here of</p> <p>9 the Lawson system foundation and the process flow.</p> <p>10 What is the next software module or program that you</p> <p>11 need in order to have an infringing system?</p> <p>12 A The procurement modules that are needed for an</p> <p>13 infringing system include purchase order, requisitions</p> <p>14 and inventory control. These are the three that we</p> <p>15 just saw in the previous documents. And for</p> <p>16 clarification, the requisition self service is going</p> <p>17 to sit on top of this.</p> <p>18 Q But at this point, let's go back, at this point</p> <p>19 with this platform and these three modules, does that</p> <p>20 comprise an infringing system?</p> <p>21 A Yes, it does.</p> <p>22 Q And you're going to discuss in detail the purchase</p> <p>23 order module, the requisitions module, and the</p> <p>24 inventory control module in the context of Lawson's</p> <p>25 documents and witness testimony?</p>	<p>581</p> <p>1 individuals within a company, for example?</p> <p>2 A Yes, it does.</p> <p>3 Q Do you know whether or not Lawson when it licenses</p> <p>4 this requisition self service module, licenses it on</p> <p>5 the basis of the number of potential users of that</p> <p>6 software module?</p> <p>7 A Yes.</p> <p>8 Q Do they?</p> <p>9 A Yes.</p> <p>10 Q Just so I'm clear, the requisition self service</p> <p>11 module can't work without the requisition module that</p> <p>12 sits upon the Lawson system foundation and process</p> <p>13 flow flat on technology foundation. Is that what</p> <p>14 you're indicating?</p> <p>15 A Yes, that's correct.</p> <p>16 Q Is there another module that you did an analysis</p> <p>17 of?</p> <p>18 A Yes. So there's a Punchout module, which I kind</p> <p>19 of indicated for. It sits on top of requisition self</p> <p>20 service.</p> <p>21 Q Are we going to see some documentation and have</p> <p>22 you reviewed some testimony in which the purchase</p> <p>23 order requisitions and inventory control modules that</p> <p>24 are all the S3 procuring modules require the Lawson</p> <p>25 system foundation?</p>
<p>580</p> <p>1 A Yes, I am.</p> <p>2 Q Well, let's go to the next build then. So the</p> <p>3 next thing you placed on top of this platform here</p> <p>4 we're building is this module or software program</p> <p>5 called "requisition self service." Do you see that?</p> <p>6 A I do.</p> <p>7 Q Why did you do that? Why did you make the</p> <p>8 arrangement like this?</p> <p>9 A Because the requisition self service is a module</p> <p>10 that is modern and user friendly. So it has a web</p> <p>11 based interface. But it uses the functionality of the</p> <p>12 requisition module below it.</p> <p>13 So requisition self service can be installed only</p> <p>14 if you already have the requisition module beneath it.</p> <p>15 So you can think of, in software terms, the</p> <p>16 requisition module provides a certain set of</p> <p>17 capabilities and functionalities, and requisition self</p> <p>18 service is a user friendly overlay on top of that.</p> <p>19 Q Does it permit more end users to utilize the --</p> <p>20 A Yes. By user friendly, this means that you don't</p> <p>21 need as much training. You don't need to be as much</p> <p>22 of a specialist. It's more for the guy on the street.</p> <p>23 Q Does the requisition self service permit Lawson to</p> <p>24 distribute the functionality for this electronic</p> <p>25 sourcing and procurement to a greater number of</p>	<p>582</p> <p>1 A Yes.</p> <p>2 Q Do they?</p> <p>3 A They do.</p> <p>4 Q So just going back then to Plaintiff's Exhibit</p> <p>5 No. 131, which was the --</p> <p>6 THE COURT: Go back to the other one just a</p> <p>7 minute.</p> <p>8 Are you saying that you can't use the</p> <p>9 procurement Punchout without also using the RSS, the</p> <p>10 S3, and the foundation?</p> <p>11 THE WITNESS: Yes, Your Honor.</p> <p>12 THE COURT: All right. Go ahead.</p> <p>13 MR. ROBERTSON: I was going to come to that,</p> <p>14 Your Honor, but thank you.</p> <p>15 BY MR. ROBERTSON:</p> <p>16 Q Let's go back to that for a second since the Court</p> <p>17 has raised the question.</p> <p>18 So if I'm going to have procurement Punchout, that</p> <p>19 capability to go out over the Internet and go to</p> <p>20 individual vendors for specially created Lawson vendor</p> <p>21 website in order to do my shopping, I must have</p> <p>22 licensed requisition self service, the three S3</p> <p>23 procurement modules, and the platform technology</p> <p>24 foundation including Lawson's system foundation and</p> <p>25 process flow; is that right?</p>

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<p>583</p> <p>1 A That's correct.</p> <p>2 Q Is that reflected in the documents and the</p> <p>3 testimony that you have seen?</p> <p>4 A Yes, it is.</p> <p>5 Q And just so we're clear, procurement Punchout</p> <p>6 sitting alone, can it perform the functionality of</p> <p>7 going out over the Internet to individual vendors in</p> <p>8 order to do this shopping function?</p> <p>9 A No.</p> <p>10 Q Requisition self service sitting alone without the</p> <p>11 S3 procurement modules and the platform technology,</p> <p>12 can it perform any of the functionality that's</p> <p>13 described in the patents?</p> <p>14 A No.</p> <p>15 Q Let me just be clear then. So Punchout</p> <p>16 procurement alone in your opinion doesn't infringe any</p> <p>17 of the claims of the patent?</p> <p>18 A Not by itself.</p> <p>19 Q Well, requisition self service alone doesn't</p> <p>20 infringe any of the claims of the patent?</p> <p>21 A Correct.</p> <p>22 Q If we could go back to just the yellow and blue.</p> <p>23 In this configuration, are you going to have opinions</p> <p>24 with respect to whether or not the functionality</p> <p>25 provided by the software here, the capability of the</p>	<p>585</p> <p>1 foundation, can that be an instance of infringing</p> <p>2 activity under the asserted claims?</p> <p>3 A Yes, it can.</p> <p>4 Q Again, just to be clear, though, because this can</p> <p>5 be a little confusing. I don't need all of these</p> <p>6 modules in order to infringe the claims, do I?</p> <p>7 A You do not.</p> <p>8 THE COURT: Are you at a transition point?</p> <p>9 MR. ROBERTSON: This would be a good time to</p> <p>10 break, Your Honor.</p> <p>11 THE COURT: All right, ladies and gentlemen.</p> <p>12 We'll have the morning recess for about 20 minutes.</p> <p>13 And, if you will, just take your notepads with you.</p> <p>14 That will be fine.</p> <p>15 (The jury is out.)</p> <p>16 All right. We'll be in recess for 20</p> <p>17 minutes.</p> <p>18 (Brief recess taken.)</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>584</p> <p>1 software infringes the claims of the patent?</p> <p>2 A I'm going to have an opinion on that.</p> <p>3 Q Why don't you just preview that opinion?</p> <p>4 A And my opinion is that this is an instance of an</p> <p>5 infringing system.</p> <p>6 Q Let's add the next module. Is this going to be</p> <p>7 also instances of infringing activity under the claims</p> <p>8 at issue here?</p> <p>9 A Yes, it is.</p> <p>10 Q Let's add the next module. Is this also going to</p> <p>11 be instances of infringing activity under the claims</p> <p>12 that are at issue here?</p> <p>13 A Yes.</p> <p>14 Q Let's add the next module. Here's a module that</p> <p>15 sits on these S3 procurement modules called the</p> <p>16 electronic data interchange. You talked a little bit</p> <p>17 about that. Is that a module that Lawson offers as</p> <p>18 part of its infringing system?</p> <p>19 A Yes, it is.</p> <p>20 Q And that is sitting on top of your S3 procurement</p> <p>21 modules and your platform technology modules. Do you</p> <p>22 see that?</p> <p>23 A That's right.</p> <p>24 Q With just the electronic data interchange and the</p> <p>25 S3 procurement modules and the platform technology</p>	<p>586</p> <p>1 THE COURT: All right.</p> <p>2 Q Dr. Weaver, this platform technology foundation, the</p> <p>3 yellow box that has the Lawson Software foundation, you are</p> <p>4 aware that Lawson sells other, what they call a suite of</p> <p>5 business solutions for doing financial accounting, things like</p> <p>6 that, human resource, business processing; correct?</p> <p>7 A Yes, I saw that in their documents.</p> <p>8 Q Those software modules, can they also sit on this platform</p> <p>9 technology foundation?</p> <p>10 A Yes, they can.</p> <p>11 Q By adding additional applications to this platform</p> <p>12 technology foundation, does that avoid infringement in your</p> <p>13 opinion?</p> <p>14 A It does not.</p> <p>15 Q Is that consistent with your opinion that by adding</p> <p>16 functionality, you can't avoid infringement if at least you</p> <p>17 have the claimed functionality that is satisfied by the</p> <p>18 elements at issue in the claim?</p> <p>19 A For any claim, if you have all the elements of a claim,</p> <p>20 adding additional functionality does not change the</p> <p>21 infringement picture.</p> <p>22 Q If we widen this platform technology a little bit and on</p> <p>23 top of it we put human resource, the software module, we put</p> <p>24 the financial accounting module and some other kind of module,</p> <p>25 adding those other modules wouldn't avoid infringement if we</p>

<p>587</p> <p>1 had, in this instance at least, the yellow box and the blue</p> <p>2 box; right?</p> <p>3 A That's correct.</p> <p>4 Q Even if we had those other modules and we had the yellow</p> <p>5 box, the blue box, the green box, the brown box, and the purple</p> <p>6 box, and four other boxes sitting on the platform, would that</p> <p>7 still be an infringing configuration?</p> <p>8 A This is an infringing configuration. So is this, so is</p> <p>9 this, so is this. So adding more to that doesn't change that</p> <p>10 picture.</p> <p>11 Q At a minimum, just so we're clear again, we need the blue</p> <p>12 and the yellow.</p> <p>13 A That's the minimum.</p> <p>14 Q Would you take a look at binder five. This is going to be</p> <p>15 Plaintiff's Exhibit Number 211. Can you tell us what this is?</p> <p>16 A This is the Lawson Punchout -- the procurement Punchout</p> <p>17 installation guide that's going to tell you how to install this</p> <p>18 Punchout application.</p> <p>19 Q And when was this published?</p> <p>20 A This was May 2008.</p> <p>21 Q Why don't we go to the page that is bar-coded by page ten,</p> <p>22 but it is Bates labeled 4788 called installation overview.</p> <p>23 A Okay.</p> <p>24 Q And do you see there, there are system requirements</p> <p>25 identified?</p>	<p>589</p> <p>1 What is being illustrated -- first, what's it entitled?</p> <p>2 A The Lawson procurement Punchout network architecture</p> <p>3 example.</p> <p>4 Q And can you help tell us what this is illustrating?</p> <p>5 A This is complex. This is going to illustrate the</p> <p>6 communications flow as one moves from a Lawson system through</p> <p>7 the Punchout process into an external vendor's website with</p> <p>8 catalog and database and so on.</p> <p>9 It's going to explain how we get there and then how we get</p> <p>10 back carrying with us whatever items have been added to the</p> <p>11 shopping cart at the external vendor and then how that shopping</p> <p>12 cart gets loaded into the Lawson shopping cart.</p> <p>13 Q Are we going to see this in one of your demonstrations?</p> <p>14 A We are.</p> <p>15 Q So that would probably be the best way to understand this</p> <p>16 complex process?</p> <p>17 A Well, this is the way you understand the communications</p> <p>18 flow. You will simply observe it in the demonstration.</p> <p>19 Q Next exhibit is going to be PX-97, Dr. Weaver. It's in</p> <p>20 binder one. Do you have it, Doctor?</p> <p>21 A I do.</p> <p>22 Q What is this document?</p> <p>23 A This is the requisitions user guide, so this one is going</p> <p>24 to tell us how to use the requisition module.</p> <p>25 Q Is that one of the modules that was in your illustration?</p>
<p>588</p> <p>1 A I do.</p> <p>2 Q And under system requirements, it says, listed below are</p> <p>3 the software requirements for running Lawson procurement</p> <p>4 Punchout. These requirements must be met before you begin</p> <p>5 installing. Do you see that?</p> <p>6 A Yes.</p> <p>7 Q What are the components, the Lawson server requirements</p> <p>8 for the Lawson procurement Punchout module?</p> <p>9 A It's the S3 Lawson system foundation, server applications,</p> <p>10 and process flow designer.</p> <p>11 Q Is that consistent with your build there, that</p> <p>12 demonstrative you had as to what were some of the foundational</p> <p>13 software requirements?</p> <p>14 A Yes.</p> <p>15 Q Also, it says, Lawson procurement Punchout server</p> <p>16 requirements. Do you see that as well?</p> <p>17 A I do.</p> <p>18 Q What is the additional component there that's required in</p> <p>19 order to be able to install Lawson procurement Punchout?</p> <p>20 A You must have the Lawson requisition self-service.</p> <p>21 Q And, so, is that consistent with the illustration you had</p> <p>22 for us?</p> <p>23 A Certainly is.</p> <p>24 Q Can you turn to the page that is actually -- the barcode</p> <p>25 at page 12 has the Bates label that ends 4790, Exhibit 211.</p>	<p>590</p> <p>1 A It was.</p> <p>2 Q Does Lawson provide this guide to its customers?</p> <p>3 A It does.</p> <p>4 Q Let's go to the page then, barcode 11, which is Bates</p> <p>5 label 1108?</p> <p>6 A Okay.</p> <p>7 Q And at the top, it says overview of requisitions?</p> <p>8 A Right.</p> <p>9 Q What significance on this overview of requisitions would</p> <p>10 you like to show the jury?</p> <p>11 A That first paragraph that explains that the Lawson</p> <p>12 requisitions application lets you create requests with demand</p> <p>13 on stock and demand on vendors, replenish cart par locations,</p> <p>14 and process and manage requisitions. So we're going to be</p> <p>15 interested in that demand on vendors and managing requisitions.</p> <p>16 Q What next of significant on this page would you like to</p> <p>17 point out to the jury?</p> <p>18 A We move down here to creating requisitions. When you</p> <p>19 create a requisition, you request items from inventory or from</p> <p>20 vendors. The requisitions application provides different</p> <p>21 methods for creating requisitions that allow you to customize</p> <p>22 the requesting process to suit your business needs.</p> <p>23 Q So what is Lawson telling us here with respect to creating</p> <p>24 requisitions --</p> <p>25 A Sorry. That confirms that Lawson is able to create a</p>

<p>591</p> <p>1 requisition to request items from vendors.</p> <p>2 Q Under the heading processing requisitions, what, if</p> <p>3 anything, would you like to point out to the jury?</p> <p>4 A The first paragraph here, and then its continuation on the</p> <p>5 next page, the approval process places monetary limits on the</p> <p>6 amount a requester can request. The requisitions application</p> <p>7 provides options for an approver to authorize, reject, or</p> <p>8 un-release for requisition.</p> <p>9 Moving on to the next page at the end of the first line,</p> <p>10 purchase orders are created from requisitions in the purchase</p> <p>11 order application to fill demand on vendors.</p> <p>12 Q And what is Lawson indicating here is the capability of</p> <p>13 this requisitions module?</p> <p>14 A So it's confirming that the requisitions module has to be</p> <p>15 integrated with the purchase order module if we're going to be</p> <p>16 able to use it to create purchase orders. Actually do -- yes,</p> <p>17 to process requisitions into purchase orders.</p> <p>18 Q Can we go on to the next page, Bates labeled -- that is</p> <p>19 barcoded 13 and ends with the Bates label 110. It says at the</p> <p>20 top, how requisitions integrates with other applications. This</p> <p>21 section explains how the requisitions application interfaces</p> <p>22 with other Lawson applications. What of interest to the jury</p> <p>23 would you like to point out here?</p> <p>24 A That here in the diagram, we have -- so we have</p> <p>25 requisitions sitting in the middle of this -- this is a</p>	<p>593</p> <p>1 in the description of products that are available?</p> <p>2 A Yes. Products that are being requested, being</p> <p>3 requisitioned.</p> <p>4 Q Under the heading purchase order, what is Lawson telling</p> <p>5 us there as to the capability of the requisitions application</p> <p>6 interacting with the purchase order application, the module?</p> <p>7 A It says that the requisitions application sends order</p> <p>8 requests for goods or services to the purchase order</p> <p>9 application. Purchase orders can then be created automatically</p> <p>10 to fill the order. The requisition application receives item</p> <p>11 costs from price agreements defined in purchase order, and</p> <p>12 that's why we had the bidirectional arrow between requisitions</p> <p>13 and purchase order. Information flows both ways.</p> <p>14 Q Can you turn to the next page of Exhibit 97 which ends</p> <p>15 with Bates label 112, and there's a heading there, process</p> <p>16 flow. What is Lawson indicating about the functionality of the</p> <p>17 requisition module here with respect to process flow?</p> <p>18 A It says that the requisitions application sends a request</p> <p>19 for service to the Lawson process flow application. The</p> <p>20 predefined services for the requisitions application are the</p> <p>21 requisitions approval service and the rush item processing</p> <p>22 service. So this says that the process control application has</p> <p>23 to be integrated with requisitions if we're going to be able to</p> <p>24 support the approval mechanism.</p> <p>25 Q If you'll turn now to page 63, barcode -- or the Bates</p>
<p>592</p> <p>1 software architecture explaining how these modules interact</p> <p>2 with each other and how information flow goes from module to</p> <p>3 module, and we're going to be interested in the interaction</p> <p>4 between the requisition and the inventory control and,</p> <p>5 likewise, the requisition and the purchase order.</p> <p>6 Q There are bidirectional and unidirectional arrows which</p> <p>7 you mentioned earlier. Can you tell us what your understanding</p> <p>8 is they are illustrating?</p> <p>9 A Sure. Inventory control is providing information to the</p> <p>10 requisition module. Requisition is exchanging information in</p> <p>11 both directions with purchase order.</p> <p>12 Q Is there anything else of interest you want to point out</p> <p>13 on that page?</p> <p>14 A That's it.</p> <p>15 MR. ROBERTSON: Can we go to the next page which is</p> <p>16 Bates labeled 111.</p> <p>17 Q What, if any, interest on this page would you like to</p> <p>18 inform the jury about?</p> <p>19 A In the inventory control description, it says that the</p> <p>20 requisitions application receives item information from the</p> <p>21 inventory control application. Now, that was that</p> <p>22 unidirectional arrow that we just saw. The item numbers and</p> <p>23 descriptions used by requisitions are stored in the inventory</p> <p>24 control application. So it needs that information.</p> <p>25 Q And item numbers in description, are they the item numbers</p>	<p>594</p> <p>1 label ending 160, the page at the top says what is a price</p> <p>2 agreement. Do you see that?</p> <p>3 A I do.</p> <p>4 Q Do you have an understanding as to what a price agreement</p> <p>5 is?</p> <p>6 A Yes.</p> <p>7 Q How does Lawson define price agreement here?</p> <p>8 A A price agreement is a pricing tool set up in the purchase</p> <p>9 order application that provides the item costs which is the</p> <p>10 unit cost for purchase order and requisition lines.</p> <p>11 Q What, if any, significance does that have to this case?</p> <p>12 A Well, it's telling us here that -- excuse me -- that the</p> <p>13 customer needs to set up this price agreement with the vendor</p> <p>14 so that the vendor can electronically say what the cost of the</p> <p>15 items is going to be.</p> <p>16 Q Does this relate to the testimony earlier you had as to</p> <p>17 what the vendor price agreements were?</p> <p>18 A Yes, it does.</p> <p>19 Q Lawson also references here a catalog or quote price</p> <p>20 agreement?</p> <p>21 A Yes.</p> <p>22 Q What significance does that have to your opinions?</p> <p>23 A This says that a catalog or quote price agreement is a</p> <p>24 list of items and unit costs supplied by a vendor. You can set</p> <p>25 up the cost defaulting structure at the company level to</p>

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1 MR. ROBERTSON: I don't know who he's going  
2 to question about it.

3 THE COURT: I'm sure he's going to question  
4 Dr. Weaver based on what he said. Not because I'm  
5 prescient or anything.

6 MR. ROBERTSON: I guess I don't have an  
7 objection to that.

8 THE COURT: Well, good then. We solved  
9 something.

10 Raise the blinds so that in the morning it  
11 will be open.

12 All right. I think that's everything. And  
13 you don't expect to finish tomorrow, is that right,  
14 Mr. Robertson? You don't expect to finish tomorrow,  
15 is that what your situation is?

16 MR. ROBERTSON: I do not, sir. I expect Mr.  
17 McDonald might have a half an hour or 45 minutes of  
18 cross-examination.

19 THE COURT: If you ask your questions bullet  
20 points, 30 minutes is plenty. Once you get beyond  
21 that, the expert bets you is generally what happens.

22 All right. Okay. So we're not going on  
23 Monday. You're going back on Tuesday. Thank you very  
24 much. Hope you feel better, all of you. Don't bring  
25 anything else up here.

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2 (The proceedings were adjourned at 5:15 p.m.)

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<p>990</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 5 ----- 6 ePLUS, INC. : Civil Action No. 7 : 3:09CV620 8 vs. : 9 : 10 : 11 : 12 : 13 : 14 : 15 : 16 : 17 : 18 : 19 : 20 : 21 : 22 : 23 : 24 : 25 : COMPLETE TRANSCRIPT OF THE JURY TRIAL BEFORE THE HONORABLE ROBERT E. PAYNE UNITED STATES DISTRICT JUDGE, AND A JURY APPEARANCES: Scott L. Robertson, Esquire Michael G. Strapp, Esquire Jennifer A. Albert, Esquire David M. Young, Esquire Goodwin Procter, LLP 901 New York Avenue NW Suite 900 Washington, D.C. 20001 Craig T. Merritt, Esquire Christian &amp; Barton, LLP 909 East Main Street Suite 1200 Richmond, Virginia 23219-3095 Counsel for the plaintiff Peppy Peterson, RPR Official Court Reporter United States District Court</p>	<p>992</p> <p>1 PROCEEDINGS 2 3 THE CLERK: Civil action number 3:09CV00620, ePlus, 4 Incorporated versus Lawson Software, Incorporated. Mr. Scott 5 L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, Mr. 6 Michael G. Strapp, and Mr. David Young represent the plaintiff. 7 Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms. 8 Kirstin L. Stoll-DeBell, and Mr. William D. Schultz represent 9 the defendant. Are counsel ready to proceed? 10 MR. ROBERTSON: Plaintiff is, Your Honor. 11 MR. McDONALD: Yes, we are, Your Honor. 12 THE COURT: What did you all need to talk about? 13 MS. STOLL-DeBELL: We actually resolved it, Your 14 Honor, between the time we that mentioned -- 15 THE COURT: Tell them to bring the jury in. What do 16 we have this morning? 17 MR. ROBERTSON: The first witness we're calling this 18 morning is Mr. Keith Lohkamp, Your Honor. He's a Lawson 19 employee. I have a number of binders associated with the 20 witnesses this morning. I want to make sure my paralegal -- 21 oh. 22 23 (Jury in.) 24 25 THE COURT: Good morning, ladies and gentlemen. All</p>
<p>991</p> <p>1 APPEARANCES: (cont'g) 2 Dabney J. Carr, IV, Esquire 3 Troutman Sanders, LLP 4 Troutman Sanders Building 5 1001 Haxall Point 6 Richmond, Virginia 23219 7 Daniel W. McDonald, Esquire 8 Kirstin L. Stoll-DeBell, Esquire 9 William D. Schultz, Esquire 10 Merchant &amp; Gould, PC 11 80 South Eighth Street 12 Suite 3200 13 Minneapolis, Minnesota 55402 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>993</p> <p>1 right, we have a witness. Next witness. 2 MR. ROBERTSON: Mr. Keith Lohkamp. 3 THE COURT: All right, Keith Lohkamp. 4 5 KEITH LOHKAMP, 6 a witness, called by the plaintiff, having been first duly 7 sworn, testified as follows: 8 DIRECT EXAMINATION 9 BY MR. ROBERTSON: 10 Q Good morning, Mr. Lohkamp. 11 A Good morning. 12 Q Mr. Lohkamp, you are a Lawson Software employee; correct? 13 A Yes, I am. 14 Q And you are a product strategist for supply chain 15 management; correct? 16 A Yes. 17 THE COURT: Can we get the witness to spell his last. 18 Q Can you please spell your last name, sir, for the record. 19 A It's L-o-h-k-a-m-p. 20 Q Can you explain to the jury essentially what supply chain 21 management is? 22 A Supply chain management involves the procurement of goods 23 and services and the management of the inventory related to 24 managing those goods. It also includes, can include the sell 25 side, so selling those goods and services as well.</p>

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<p style="text-align: right;">1062</p> <p style="text-align: center;">LOHKAMP - DIRECT      1062</p> <p>1 order form that modifies a statement of work for</p> <p>2 Community Medical Centers.</p> <p>3 Q What's a change order form modifying statement of</p> <p>4 work? Does that mean the statement of work has been</p> <p>5 modified in some way?</p> <p>6 A Yeah. My understanding of what a change order</p> <p>7 form is someone is requesting a change to the services</p> <p>8 we provide.</p> <p>9 Q What is the next document in that binder?</p> <p>10 A It's PX 501 L. And it's a statement of work for</p> <p>11 Deaconess Health System.</p> <p>12 Q Can you go to the next one?</p> <p>13 A The next one is PX 501 M, and it's the master</p> <p>14 terms and conditions, Lawson Software and user</p> <p>15 agreement.</p> <p>16 Q What's the next document?</p> <p>17 A That's the last one in this binder. Should I go</p> <p>18 to the next binder?</p> <p>19 Q All right. Sorry, sir. What's the first document</p> <p>20 in there?</p> <p>21 A In this first binder?</p> <p>22 Q No, in the second binder.</p> <p>23 A I haven't got that. Sorry. It's PX 501 N. And</p> <p>24 the first page is a sales and use tax certification of</p> <p>25 exemption.</p>	<p style="text-align: right;">1064</p> <p style="text-align: center;">LOHKAMP - DIRECT      1064</p> <p>1 MR. ROBERTSON: Well, Your Honor, I'd like to</p> <p>2 offer what we had discussed before was is a Federal</p> <p>3 Rule of Evidence 1006 summary of the documentation.</p> <p>4 We've provided it to the defendant, and I believe with</p> <p>5 one modification it was not objected to. It's</p> <p>6 Plaintiff's Exhibit 516.</p> <p>7 THE COURT: Any objections to Plaintiff's</p> <p>8 Exhibit 516?</p> <p>9 MS. STOLL-DeBELL: No, Your Honor.</p> <p>10 THE COURT: What is it?</p> <p>11 MR. ROBERTSON: What is it? I'm sorry, Your</p> <p>12 Honor?</p> <p>13 THE COURT: Summary of what?</p> <p>14 MR. ROBERTSON: Of these contracts and what,</p> <p>15 in fact, the software applications and modules that</p> <p>16 were licensed, the involvement and the implementation</p> <p>17 of those, and the various customers and information</p> <p>18 detailing what the implementation was and what the</p> <p>19 particular applications or modules were that were</p> <p>20 licensed.</p> <p>21 THE COURT: And there's no objection to PX</p> <p>22 516. It's admitted.</p> <p>23 (Plaintiff's Exhibit 516 is admitted into</p> <p>24 evidence.)</p> <p>25 THE COURT: And all of the PX 501s are</p>
<p style="text-align: right;">1063</p> <p style="text-align: center;">LOHKAMP - DIRECT      1063</p> <p>1 Q What's the next page?</p> <p>2 A The next page is a services turnover document.</p> <p>3 Q Okay. Next page?</p> <p>4 A It's a services order form for Holland Hospital.</p> <p>5 Q What's the exhibit number for that one, sir?</p> <p>6 A This one is PX 501 N.</p> <p>7 Q Services order form, is that the order form for</p> <p>8 the services that Lawson is going to be providing to</p> <p>9 Holland Hospital?</p> <p>10 A Yes, it is.</p> <p>11 Q What's the next document, sir?</p> <p>12 A The next document is PX 501 R, and it states,</p> <p>13 "Server sizing estimate for Owensboro Medical Health</p> <p>14 System."</p> <p>15 Q Can you turn to the page where it indicates it's</p> <p>16 going to be a contract for services provided?</p> <p>17 A The next page is "What is a server sizing</p> <p>18 estimate?"</p> <p>19 Q What about the next page?</p> <p>20 A "Parameters overview." It's still part of the</p> <p>21 sizing.</p> <p>22 Q Next page, sir?</p> <p>23 A "Proposed architecture."</p> <p>24 THE COURT: Interesting, but not useful.</p> <p>25 What are we doing? These exhibits are in.</p>	<p style="text-align: right;">1065</p> <p style="text-align: center;">LOHKAMP - DIRECT      1065</p> <p>1 admitted, aren't they?</p> <p>2 All right. Let's go.</p> <p>3 BY MR. ROBERTSON:</p> <p>4 Q I'd like to talk to you, sir, a little bit about</p> <p>5 some industry analyst reports and publications that</p> <p>6 you review as part of your job as product strategist.</p> <p>7 All right?</p> <p>8 So in your role as a product strategist, you have</p> <p>9 had occasion to review industry analyst reports; is</p> <p>10 that right?</p> <p>11 A That is correct.</p> <p>12 Q Among the industry analyst reports you review on</p> <p>13 occasion is Gartner, correct?</p> <p>14 A Correct.</p> <p>15 Q And you also review industry analyst reports from</p> <p>16 Aberdeen; is that right?</p> <p>17 A Yes, I do.</p> <p>18 Q These are industry analyst reports that often</p> <p>19 refer to products that were within your</p> <p>20 responsibilities at the company including procurement,</p> <p>21 right?</p> <p>22 A Yes.</p> <p>23 Q And you have also reviewed industry analyst</p> <p>24 reports from Forester; is that right?</p> <p>25 A Yes, I have.</p>

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<p style="text-align: right;">1066</p> <p style="text-align: center;">LOHKAMP - DIRECT      1066</p> <p>1 Q Particularly, in the procurement area; is that</p> <p>2 correct?</p> <p>3 A Yes, I have.</p> <p>4 Q And for procurement industry, you have also looked</p> <p>5 at analyst reports from AMR; is that right?</p> <p>6 A Yes.</p> <p>7 Q And you have also looked at analyst reports from</p> <p>8 an outfit known as VDC; is that right?</p> <p>9 A That's correct.</p> <p>10 Q And Lawson reviews and sometimes relies on the</p> <p>11 information provided in those industry analyst reports</p> <p>12 for making its own internal decision; isn't that</p> <p>13 right?</p> <p>14 A Yes, we sometimes lavish those into our planning.</p> <p>15 Q Isn't it true that you provide information</p> <p>16 concerning Lawson's products including procurement</p> <p>17 products in the supply chain management industry to</p> <p>18 those analyst reports?</p> <p>19 A Yes, I do.</p> <p>20 Q And part of your duties as a product strategist</p> <p>21 for Lawson is to speak with these industry analysts</p> <p>22 about the procurement solutions like S3 offered by</p> <p>23 Lawson; isn't that right?</p> <p>24 A Yes, it is.</p> <p>25 Q And among the industry analysts that you speak</p>	<p style="text-align: right;">1068</p> <p style="text-align: center;">LOHKAMP - DIRECT      1068</p> <p>1 you also keep abreast of trends and developments in</p> <p>2 the supply chain management industry, right?</p> <p>3 A I try to.</p> <p>4 Q So if there are any mainstream periodicals or news</p> <p>5 services that are discussing the procurement sphere,</p> <p>6 for example, you try to pay attention to those as part</p> <p>7 of your job responsibilities?</p> <p>8 A I certainly pay attention to certain publications.</p> <p>9 Q What would those be outside of the analyst reports</p> <p>10 we've talked about?</p> <p>11 A I follow Health Care Purchasing News, Materials</p> <p>12 Management and Health Care. I also get emails from IT</p> <p>13 Toolbox. I also get emails from Supply Chain</p> <p>14 Management Review. So those are some of the key</p> <p>15 publications I look at.</p> <p>16 Q How about just general news publications,</p> <p>17 newspapers, that kind of thing? If they have articles</p> <p>18 of interest involving electronic procurement, do you</p> <p>19 keep abreast press of them?</p> <p>20 A If I see the articles, I would read them.</p> <p>21 Q Let's talk a little bit now about your knowledge</p> <p>22 of ePlus, if we can.</p> <p>23 A Okay.</p> <p>24 Q Isn't it true that you knew of ePlus prior to the</p> <p>25 filing of this lawsuit?</p>
<p style="text-align: right;">1067</p> <p style="text-align: center;">LOHKAMP - DIRECT      1067</p> <p>1 with in your role as a product strategist is Garter,</p> <p>2 correct?</p> <p>3 A Yes.</p> <p>4 Q And Forester?</p> <p>5 A Yes.</p> <p>6 Q Aberdeen?</p> <p>7 A Yes, Aberdeen.</p> <p>8 Q VDC?</p> <p>9 A Yes.</p> <p>10 Q AMR?</p> <p>11 A Yes.</p> <p>12 Q And you use these industry analyst reports to</p> <p>13 provide Lawson with intelligence with respect to</p> <p>14 market trends; isn't that right?</p> <p>15 A Some of the reports I do use for that.</p> <p>16 Q What are the ones you find most reliable, sir?</p> <p>17 A Gartner is one of the more reliable ones.</p> <p>18 Q And you have a personal subscription to one of</p> <p>19 more of these publications; isn't that right?</p> <p>20 A I have a personal subscription to AMR, but then it</p> <p>21 converted into Gartner when they were purchased.</p> <p>22 Q But the ones you use most are Gartner and</p> <p>23 Forester; isn't that right?</p> <p>24 A Gartner, Forester and AMR.</p> <p>25 Q Now, outside of these industry analyst reports,</p>	<p style="text-align: right;">1069</p> <p style="text-align: center;">LOHKAMP - DIRECT      1069</p> <p>1 A Yes, I did.</p> <p>2 Q And you initially became aware of ePlus at a</p> <p>3 health association conference in 2003; isn't that</p> <p>4 right?</p> <p>5 A Yes.</p> <p>6 Q Is that one of those conferences you were talking</p> <p>7 about before where various companies go and have</p> <p>8 booths in order to display the software solutions that</p> <p>9 they have?</p> <p>10 A That was an industry conference where they did</p> <p>11 have booths set up for vendors.</p> <p>12 Q You saw that ePlus had a booth set up there; is</p> <p>13 that right?</p> <p>14 A Yes, I did.</p> <p>15 Q And you visited that booth; isn't that right, sir?</p> <p>16 A I did stop by that booth.</p> <p>17 Q And you recall that ePlus was exhibiting product</p> <p>18 offerings in procurement relating to catalogs; isn't</p> <p>19 that right.</p> <p>20 A Yes, I recall they had software related to</p> <p>21 catalogs.</p> <p>22 Q And it's also true that you're aware of ePlus</p> <p>23 prior to the filing of this law suit by their listing</p> <p>24 in the Forester e-Procurement Wave; isn't that right?</p> <p>25 A I didn't recall seeing that, and I went back and</p>

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<p style="text-align: right;">1150</p> <p>Lohkamp - Redirect 1150</p> <p>1 Q But the intent of this agreement then is not the</p> <p>2 relationship that Lawson might have with its customer or the</p> <p>3 punchout trading partner might have with its customer, the</p> <p>4 intent of this agreement is how you formulate your joint</p> <p>5 marketing activities for your mutual benefit; isn't that right?</p> <p>6 A It is for the joint agreement with them.</p> <p>7 Q To your mutual benefit, sir; right?</p> <p>8 A Yes.</p> <p>9 Q Lawson does specify the format for how the item data needs</p> <p>10 to come back from the punchout catalog to the RSS shopping</p> <p>11 cart; isn't that right?</p> <p>12 A We specify the format, the standard.</p> <p>13 Q So the answer to my question is yes; right?</p> <p>14 A Yes.</p> <p>15 Q And if the customer using the Lawson software wants to get</p> <p>16 to a punchout trading partner website, whether they be under</p> <p>17 agreement or not under agreement, it needs the Lawson punchout</p> <p>18 application; isn't that right?</p> <p>19 A To use punchout to that vendor website.</p> <p>20 Q They can't get there without the procurement punchout</p> <p>21 application; right?</p> <p>22 A Yeah. Using our software, yeah.</p> <p>23 Q That's how they do it?</p> <p>24 A Yes.</p> <p>25 Q You were asked questions about how many punchout products</p>	<p style="text-align: right;">1152</p> <p>Lohkamp - Redirect 1152</p> <p>1 Q There's no question you've been aware of ePlus patents</p> <p>2 since May of 2009 when the lawsuit was filed; right?</p> <p>3 A Right.</p> <p>4 Q Everyone at Lawson has been aware of the ePlus patent</p> <p>5 since May of 2009; isn't that right?</p> <p>6 A I believe so.</p> <p>7 MR. ROBERTSON: Thank you. No further questions.</p> <p>8 THE COURT: All right. Mr. Lohkamp, it's obvious</p> <p>9 you're going to be called back as a witness in the case, and</p> <p>10 you can be temporarily excused and go about your business until</p> <p>11 you are called back, and you agree to come back then?</p> <p>12 THE WITNESS: Yes.</p> <p>13 THE COURT: Or you can remain here and wait. Which</p> <p>14 would you rather do, go about your business upon agreement to</p> <p>15 come back?</p> <p>16 THE WITNESS: Yes. Come back.</p> <p>17 THE COURT: Is that satisfactory, counsel?</p> <p>18 MS. STOLL-DeBELL: Yes, Your Honor.</p> <p>19 THE COURT: Mr. Lohkamp, you can't discuss your</p> <p>20 testimony with anybody because you may be called back as a</p> <p>21 witness; all right?</p> <p>22 THE WITNESS: Okay.</p> <p>23 THE COURT: Thank you.</p> <p>24 THE WITNESS: Thank you.</p> <p>25 MR. ROBERTSON: Your Honor, the next witness we'll be</p>
<p style="text-align: right;">1151</p> <p>Lohkamp - Redirect 1151</p> <p>1 you've sold. I think you said around a hundred, and you've got</p> <p>2 about 3- or 400 RSS, or requisition self-services applications</p> <p>3 ^; right? Now, if together the jury concludes that those</p> <p>4 applications permit Lawson's customers to infringe the patents,</p> <p>5 it's not an excuse for Lawson to say that we infringe just a</p> <p>6 little bit, is it?</p> <p>7 MS. STOLL-DeBELL: Objection, Your Honor. It calls</p> <p>8 for a legal conclusion, and it's not relevant for this witness,</p> <p>9 and it's prejudicial.</p> <p>10 THE COURT: Because it's not relevant, it's</p> <p>11 prejudicial.</p> <p>12 MS. STOLL-DeBELL: Sure.</p> <p>13 THE COURT: Sustained. It's a legal matter.</p> <p>14 Q You specified that a lot of your trading partners don't</p> <p>15 use the vendor agreement that we've been referring to here as</p> <p>16 Plaintiff's Exhibit Number 190; is that right?</p> <p>17 A That's correct.</p> <p>18 Q But the technology for punchout doesn't change for</p> <p>19 Lawson's punchout trading partners whether they use the</p> <p>20 agreement or don't use the agreement; isn't that right?</p> <p>21 Technology is the same?</p> <p>22 A That's correct.</p> <p>23 Q You indicated that you were not aware of ePlus patents</p> <p>24 prior to filing this lawsuit; is that right?</p> <p>25 A Yes.</p>	<p style="text-align: right;">1153</p> <p>Lohkamp - Redirect 1153</p> <p>1 calling is a witness by videotape. I believe Mr. Strapp can</p> <p>2 identify what it is and tell you approximately how long the</p> <p>3 videotape deposition is. It's a customer of Lawson.</p> <p>4 MR. STRAPP: Your Honor, our next witness, we're</p> <p>5 going to play the videotaped deposition of Kristy Oliver.</p> <p>6 Kristy Oliver is an employee of Blount Memorial Hospital.</p> <p>7 Blount Memorial Hospital is a customer of Lawson and a customer</p> <p>8 for the accused Lawson S3 system.</p> <p>9 The deposition videotape is a little bit under an</p> <p>10 hour, and we can provide Your Honor with a booklet of the</p> <p>11 exhibits that will be referenced during the deposition. We've</p> <p>12 marked the transcript, excerpted portions also as an exhibit,</p> <p>13 and we will provide that to Your Honor.</p> <p>14</p> <p>15 (Videotaped deposition of Kristy Oliver played for</p> <p>16 the jury.)</p> <p>17</p> <p>18 MR. STRAPP: Your Honor, for the record, exhibits</p> <p>19 referenced during the deposition transcript of Ms. Oliver were</p> <p>20 Plaintiff's Exhibits 225, 226, 228, 229, 230, 231, 234, 237,</p> <p>21 238, and 239, and the excerpted portions of the transcript that</p> <p>22 were played on the video are marked as Plaintiff's Exhibit 518.</p> <p>23 THE COURT: All right. They are admitted. Next</p> <p>24 witness?</p> <p>25 MR. ROBERTSON: Your Honor, plaintiff would call Mr.</p>

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<p>1162</p> <p>1 Q You've seen this document before?</p> <p>2 A I don't believe I've actually seen this document except as</p> <p>3 this exhibit.</p> <p>4 Q But you are aware that this is the document that is the</p> <p>5 proposal automation suite for providing answers with respect to</p> <p>6 stock questions for the S3 product; right?</p> <p>7 A I couldn't confirm or deny that.</p> <p>8 Q It's a Lawson document; is that right, sir? You have no</p> <p>9 reason to doubt it's --</p> <p>10 A I have no reason to doubt it. I mean literally, I've not</p> <p>11 seen the document like this or in any form like this. I've</p> <p>12 seen a couple answers out of the database, and when I say a</p> <p>13 couple, probably two or three over the last couple years. So</p> <p>14 for me to comment on this document, I don't know how many pages</p> <p>15 it is, it's just not fair.</p> <p>16 Q Fair enough. But Lawson does maintain such a document</p> <p>17 that has stock answers to requests for proposals?</p> <p>18 A They do maintain a database, yes.</p> <p>19 THE COURT: Does the database you are talking about</p> <p>20 have stock answers for the RFPs?</p> <p>21 THE WITNESS: Sure. It will have -- there will be</p> <p>22 things like about the company history, you know, things that</p> <p>23 are very generic questions that almost all customers will ask</p> <p>24 in the RFP process, and there's a set of answers that will come</p> <p>25 up there along with other questions that maybe not all</p>	<p>1164</p> <p>1 Q Question 149 of 398, and this has to deal with a fairly</p> <p>2 complex question concerning EDI for supply chain management;</p> <p>3 correct?</p> <p>4 A Uh-huh.</p> <p>5 Q Not simply what the company is about and that kind of</p> <p>6 thing?</p> <p>7 A Absolutely. It would be a variety of questions.</p> <p>8 Q Specific to the functions and features of the S3 product?</p> <p>9 A Correct.</p> <p>10 Q All right, there was some discussion about industry</p> <p>11 analyst reports; do you recall that?</p> <p>12 A I certainly do.</p> <p>13 Q And Mr. Lohkamp, I understood him to indicate that he</p> <p>14 personally subscribes to a number of those publications;</p> <p>15 correct? You heard that?</p> <p>16 A I certainly heard that, yes.</p> <p>17 Q But the company also subscribes to them as a company;</p> <p>18 isn't that right?</p> <p>19 A That's my understanding.</p> <p>20 Q And, I mean, in your deposition, you were asked whether or</p> <p>21 not the company subscribes to Aberdeen, Gartner, and Forrester;</p> <p>22 right?</p> <p>23 A That's correct.</p> <p>24 Q And you indicated that some of those reports concerning</p> <p>25 Lawson's newer products and possible competitor products are</p>
<p>1163</p> <p>1 customers ask, but they're routinely asked by a fair number.</p> <p>2 So the sales team has asked, look, can we get what the answers</p> <p>3 should be for these so that we can just cut and paste that in</p> <p>4 so we don't get -- if we had 20 salespeople, you don't have 28</p> <p>5 different answers for the same thing.</p> <p>6 Q This document is 297 pages long. Can you just confirm</p> <p>7 that, and it has 398 stock questions that often get asked and</p> <p>8 stock answers that are often provided; is that fair enough? Do</p> <p>9 you just want to take a look at it for a minute?</p> <p>10 A I see it's 297, and keep in mind they are a pretty wide</p> <p>11 product space. This is just a few, a small number of products</p> <p>12 that I actually have under my control.</p> <p>13 Q I understand. But if you look --</p> <p>14 A 398 -- I see the last page is 398, answers to 398</p> <p>15 questions.</p> <p>16 Q And just going back to the first page, this has to do --</p> <p>17 it says there's a database identified there, and then it says</p> <p>18 Lawson S3 data. Do you see that?</p> <p>19 A Uh-huh.</p> <p>20 Q So this Exhibit 117 is specifically dealing with just the</p> <p>21 Lawson S3 product; right?</p> <p>22 A It appears to be, yes.</p> <p>23 Q And, I mean, if I just randomly open up a page -- for</p> <p>24 example, I opened up to 106.</p> <p>25 A Sure.</p>	<p>1165</p> <p>1 disseminated fairly widespread throughout the company; isn't</p> <p>2 that right?</p> <p>3 A If I said widespread, I certainly wasn't meaning -- take a</p> <p>4 4,000-person company, it's not going out to even 3,000 of those</p> <p>5 probably.</p> <p>6 Q It's available, though, over a Lawson intranet website,</p> <p>7 isn't it?</p> <p>8 A I'm trying to recall the last time I've actually been able</p> <p>9 to go out and look at any of the documents, and I don't recall</p> <p>10 any -- I mean, I actually see very few in my current role.</p> <p>11 Q Well, it's actually, according to you in your deposition,</p> <p>12 disseminated among the director level?</p> <p>13 A Correct.</p> <p>14 Q The manager level?</p> <p>15 A Yes.</p> <p>16 Q And in some instances, down to individual contributor</p> <p>17 level; do you recall that?</p> <p>18 A Yes, I certainly do. That's going to depend on the</p> <p>19 product and what the content is.</p> <p>20 Q Isn't it a fact that before a new enhancement is released,</p> <p>21 for example, with respect to this S3 supply chain management</p> <p>22 module we've been talking about, Lawson does not engage in any</p> <p>23 kind of intellectual property clearance investigation to insure</p> <p>24 that enhanced features will not infringe the intellectual</p> <p>25 property rights of third parties?</p>

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<p style="text-align: right;">1166</p> <p>1 A That's correct.</p> <p>2 Q You don't do that, do you?</p> <p>3 A I do not, no.</p> <p>4 Q The company doesn't do that as a policy; correct?</p> <p>5 A That's correct.</p> <p>6 Q And since May of 2009 when this lawsuit was instituted,</p> <p>7 Lawson has undertaken no efforts to modify or redesign its</p> <p>8 existing S3 procurement products; is that right?</p> <p>9 A That's correct.</p> <p>10 MR. ROBERTSON: That's all the questions I have.</p> <p>11 Thank you.</p> <p>12 THE COURT: Why don't we take the afternoon recess.</p> <p>13 It's time to take 20 minutes, ladies and gentlemen. You just</p> <p>14 take your pads with you.</p> <p>15</p> <p>16 (Jury out.)</p> <p>17</p> <p>18 THE COURT: Counsel, I have word from the clerk's</p> <p>19 office that ePlus intends to file 30,000 pages of exhibits</p> <p>20 under seal. What is that about?</p> <p>21 MR. MERRITT: Sounds terribly daunting. Let me try</p> <p>22 to address this, Your Honor. Under Rule 103, we think that</p> <p>23 we're required to make an offer of proof -- we'd like to do it</p> <p>24 before we close -- with regard to damages testimony in exhibits</p> <p>25 that were excluded by the Court's earlier rulings several</p>	<p style="text-align: right;">1168</p> <p>1 THE COURT: As your proffer proofs and log that as an</p> <p>2 item, and then it will be filed, and I guess it needs to be</p> <p>3 filed under seal since it has their financial information.</p> <p>4 MR. MERRITT: Yes, sir, it has financial information</p> <p>5 from Lawson. It would need to be under seal.</p> <p>6 THE COURT: Is this something that is different than</p> <p>7 the Court has considered in making its ruling on the expert,</p> <p>8 because you can't get anything in that wasn't before me on the</p> <p>9 expert's opinion.</p> <p>10 MR. MERRITT: No, sir.</p> <p>11 THE COURT: These things were all part of the</p> <p>12 expert's report, were they?</p> <p>13 MR. MERRITT: Well, there were two pieces of it, if</p> <p>14 Your Honor recalls. First of all, the expert was excluded on</p> <p>15 the motion in limine. His report and the attachments are</p> <p>16 already a part of the record, and we can't improve upon that in</p> <p>17 any way obviously. We can't move the ball on that or go back</p> <p>18 and fill.</p> <p>19 There was a second motion that the Court granted that</p> <p>20 was a Rule 37 discovery motion that precluded the use of lay</p> <p>21 testimony or additional witnesses as an alternative means of</p> <p>22 proving the damages.</p> <p>23 THE COURT: That was for failure to comply with the</p> <p>24 discovery.</p> <p>25 MR. MERRITT: That was for failure to comply with the</p>
<p style="text-align: right;">1167</p> <p style="text-align: center;">1167</p> <p>1 months ago. It has nothing to do with the matters that are</p> <p>2 currently being tried before this jury, but it's an offer of</p> <p>3 proof as to lay testimony and to associate exhibits that would</p> <p>4 have gone to the damages part of the case.</p> <p>5 The 30,000 is driven significantly by the fact that</p> <p>6 there are -- it includes some Lawson internal information that</p> <p>7 are these huge electronic spreadsheets that if they were</p> <p>8 actually printed out would be an enormous number of pages.</p> <p>9 We have suggested that with the Court's permission we</p> <p>10 might be able to simply file a written index and lodge a DVD</p> <p>11 physically with the clerk's office that keeps us from having to</p> <p>12 put boxes and boxes of these spreadsheets into the offer of</p> <p>13 proof.</p> <p>14 We'll take the Court's guidance on that, do whatever</p> <p>15 the Court would like us to do. We really are disinclined to</p> <p>16 burden the Court with all that paper, but the clerk tells us</p> <p>17 that absent special permission from the Court to put it on a</p> <p>18 disk, that the default is the paper would have to be filed.</p> <p>19 THE COURT: Their problem is they don't want the disk</p> <p>20 imported into the system. I don't see why -- how long is the</p> <p>21 index?</p> <p>22 MR. STRAPP: Approximately five pages.</p> <p>23 THE COURT: Why don't you file the index and then</p> <p>24 file the -- is it a DVD or CD or what?</p> <p>25 MR. MERRITT: I believe it's a DVD, Your Honor.</p>	<p style="text-align: right;">1169</p> <p style="text-align: center;">1169</p> <p>1 discovery, and the only opportunity for an offer as to what</p> <p>2 that proof would have been was on September 7th when that was</p> <p>3 being argued.</p> <p>4 In fact, Your Honor may recall that I argued that. I</p> <p>5 believe Mr. McDonald did as well, and you asked, well, what</p> <p>6 sort of proof would you put in, and on the fly, based on some</p> <p>7 notes, I was able to say, well, here are the people we think we</p> <p>8 might call and what some of the evidence might be.</p> <p>9 What we would like to do is take the opportunity to</p> <p>10 simply make clear, in a particularized form, what those</p> <p>11 witnesses and what that evidence would be since the one</p> <p>12 opportunity previously that was available was on the fly in</p> <p>13 that hearing. So this is simply to say what the lay testimony</p> <p>14 and exhibits would be and to try to put that into the record as</p> <p>15 an offer of proof that's sufficiently particular so somebody</p> <p>16 would understand what we were talking about on September 7th.</p> <p>17 THE COURT: Mr. McDonald, do you want a chance to</p> <p>18 review the index and/or CD or DVD and then respond?</p> <p>19 MR. McDONALD: I haven't had a chance. I don't know</p> <p>20 our team has actually had a chance to see what's involved here.</p> <p>21 I think they made their record back in September. I don't know</p> <p>22 why at this point they would be proffering evidence that's not</p> <p>23 part of what they had even offered up in connection with the</p> <p>24 joint pretrial order. It sounds like it goes well beyond that,</p> <p>25 but I guess I don't want to weigh in. Maybe we can work</p>

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1 truly apologize, and maybe you'll get another judge to handle  
2 the rest of the case.

3 MR. McDONALD: I'm not sure I picked up all that --

4 THE COURT: I'm asking if you said something and I  
5 forgot what it was, because I actually don't remember you  
6 saying anything.

7 MR. McDONALD: You didn't miss a thing. We haven't  
8 formulated our position, Your Honor. I have a couple concerns,  
9 though, I can flag and maybe give --

10 THE COURT: That would be helpful to talk about it.

11 MR. McDONALD: Well, this language about "by a  
12 vendor" means at some point in time. I think the "by a vendor"  
13 for one thing was pretty much agreed to at the Markman hearing,  
14 what it did mean, and do inject the concept in time, of time  
15 into a phrase like "by a vendor" could create some confusion, I  
16 think, do more harm than good, actually. We would probably  
17 object to that, but I haven't finalized my position.

18 THE COURT: But I think it's quite clear from the  
19 specification that it's an antecedent event to the use of the  
20 invention no matter how you cut it.

21 MR. McDONALD: I just think --

22 THE COURT: I understand what you are saying. Think  
23 about it and see what you --

24 MR. McDONALD: The other concern I have is anything  
25 we do with that, because our experts who have given opinions

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1 relating to claim construction, I'm concerned that if we now  
2 move the ball on what the claims mean, what is the implication  
3 of that for the testimony that's already been given, the  
4 testimony that's yet to come that the Court repeatedly says has  
5 to be limited to what's in the expert reports, there were prior  
6 decisions by the Court relating to prior art exclusions and  
7 things like that. I think there's many implications of making  
8 any changes here, so I'm concerned about that.

9 THE COURT: I think -- I'm not sure there are a  
10 lot -- that is not a claim construction answer. That's an  
11 instruction, and the fact of the matter is that it is not at  
12 all unusual for Courts to give revised claim constructions  
13 during the trial.

14 In fact, for a good while, it was common to give the  
15 claim construction only as part of the instructions. Now, I've  
16 never done that just because I didn't want to put myself  
17 through that agony, but that's what happens sometimes, and in  
18 that event, experts have to take their positions -- take out  
19 their position and see what happens. So we'll see.

20 MR. McDONALD: In this case, the experts were allowed  
21 to give their reports after the Court's Markman ruling, so I  
22 think that really changes the dynamic.

23 THE COURT: Okay. Anything else? Thank you. We'll  
24 see you all tomorrow at nine o'clock.

25 (Court adjourned.)

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<p>1188</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 5 ----- 6 ePLUS, INC. : Civil Action No.  : 3:09CV620 7 vs. :  : 8 LAWSON SOFTWARE, INC. : January 12, 2011  : 9 ----- 10 11 COMPLETE TRANSCRIPT OF THE JURY TRIAL 12 BEFORE THE HONORABLE ROBERT E. PAYNE 13 UNITED STATES DISTRICT JUDGE, AND A JURY 14 15 APPEARANCES: 16 Scott L. Robertson, Esquire 17 Michael G. Strapp, Esquire 18 Jennifer A. Albert, Esquire 19 David M. Young, Esquire 20 Goodwin Procter, LLP 21 901 New York Avenue NW 22 Suite 900 23 Washington, D.C. 20001 24 Craig T. Merritt, Esquire 25 Christian &amp; Barton, LLP 909 East Main Street Suite 1200 Richmond, Virginia 23219-3095 Counsel for the plaintiff  Peppy Peterson, RPR Official Court Reporter United States District Court</p>	<p>1190</p> <p>1 P R O C E E D I N G S 2 3 THE CLERK: Civil action number 3:09CV00620, ePlus, 4 Incorporated, versus Lawson Software, Incorporated. Mr. Scott 5 L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, Mr. 6 Michael G. Strapp represent the plaintiff. 7 Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms. 8 Kirstin L. Stoll-DeBell, and Mr. William D. Schultz represent 9 the defendant. Are counsel ready to proceed? 10 MR. ROBERTSON: Plaintiff is, Your Honor. 11 MR. McDONALD: Yes, Your Honor. 12 THE COURT: All right. You said you wanted to see me 13 before the jury comes in. 14 MR. McDONALD: Yeah, there's basically three issues 15 we wanted to raise. 16 THE COURT: The court reporters always can hear 17 better if you come to the lectern. 18 MR. McDONALD: There's basically three issues that we 19 wanted to raise this morning. One is our third witness in our 20 case that we start today is Ms. Raleigh. 21 THE COURT: Third witness in what? 22 MR. McDONALD: In our case when we start presenting 23 our case today. We have Mr. Richard Lawson first, Mr. 24 Christopherson second, and then Hannah Raleigh was supposed to 25 come back and be third today.</p>
<p>1189</p> <p>1189</p> <p>1 APPEARANCES: (cont'g) 2 Dabney J. Carr, IV, Esquire 3 Troutman Sanders, LLP 4 Troutman Sanders Building 5 1001 Haxall Point 6 Richmond, Virginia 23219 7 Daniel W. McDonald, Esquire 8 Kirstin L. Stoll-DeBell, Esquire 9 William D. Schultz, Esquire 10 Merchant &amp; Gould, PC 11 80 South Eighth Street 12 Suite 3200 13 Minneapolis, Minnesota 55402 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1191</p> <p>1191</p> <p>1 She was supposed to be back last night from New York, 2 and New York is getting hammered real bad by this blizzard. 3 She's trying to get another flight, but her flight is not going 4 to get her here until after the trial day is over today. So 5 we've been trying to work something out with ePlus about what 6 we would do next because we haven't disclosed any exhibits or 7 anything for the next witness. 8 THE COURT: Just call the next witness, the expert or 9 whoever you've got here. There's no magic to the order of 10 putting people on. 11 MR. McDONALD: The next witness we would have 12 actually here is Mr. Lohkamp, calling him back. 13 THE COURT: Good. 14 MR. McDONALD: That's fine. They haven't had a 15 chance to get ready for their cross-examination. 16 THE COURT: They'll be ready. They knew basically 17 what you were going to do anyway. They're not going to do it 18 on your cross-examination; they were going to do redirect, so 19 we're going to reverse things. 20 MR. McDONALD: We do have a deposition of Ms. 21 O'Loughlin on the RIMS prior art issue that we can move up in 22 the order. 23 THE COURT: Is that carefully edited to eliminate the 24 trash? 25 MR. McDONALD: That's being worked on as we speak,</p>



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<p>1300</p> <p>1 related applications that we've been hearing about</p> <p>2 over the last week or so.</p> <p>3 Q Can you tell me just briefly about your</p> <p>4 professional experience in the computer science</p> <p>5 industry?</p> <p>6 A I've been in the field a little over 30 years.</p> <p>7 About 32 years now.</p> <p>8 Q What types of jobs have you held in the field?</p> <p>9 A I've held everything from -- I started out as a</p> <p>10 computer operator. I went into systems programming.</p> <p>11 So I programmed in a number of different application</p> <p>12 languages. Managed development staffs. Did</p> <p>13 statistical analysis on computer performance. Ran</p> <p>14 marketing organizations, sales organizations, and just</p> <p>15 kind of moved up the ranks of the field.</p> <p>16 Q When did you join ProcureNet?</p> <p>17 A I joined ProcureNet roughly -- I think it was</p> <p>18 around 2000.</p> <p>19 Q What was your position at ProcureNet?</p> <p>20 A Senior vice president.</p> <p>21 Q How long did you work there at ProcureNet?</p> <p>22 A I think it was just under a year before the</p> <p>23 acquisition.</p> <p>24 Q So is it true then that ePlus acquired</p> <p>25 ProcureNet's business in 2001?</p>	<p>1302</p> <p>1 of ePlus?</p> <p>2 A Sure. Those divisions are responsible for</p> <p>3 developing, supporting and selling applications that</p> <p>4 are involved in the procurement and catalog management</p> <p>5 fields.</p> <p>6 Q What are the primary software products that are</p> <p>7 developed and sold by ePlus Systems and ePlus Content</p> <p>8 Services?</p> <p>9 A They are referred to as Procure Plus and Content</p> <p>10 Plus.</p> <p>11 Q Can you just give us a brief high level overview</p> <p>12 of Procure Plus and Content Plus?</p> <p>13 A Sure. The products work in conjunction with one</p> <p>14 another, and it provides the ability for our customers</p> <p>15 and end users to be able to select items from multiple</p> <p>16 vendors from a catalog, compare those items, decide</p> <p>17 which ones they would like to purchase from vendors,</p> <p>18 put those items on a requisition, and the system goes</p> <p>19 through a work flow for corporate approval. Inventory</p> <p>20 is checked to make sure that the items are available</p> <p>21 in inventory or if they are backordered, if you will.</p> <p>22 Then the items are placed -- there's usually a lot</p> <p>23 of different line items on a requisition that somebody</p> <p>24 orders. They're not just ordering like a blue pen.</p> <p>25 They may order different items from different vendors,</p>
<p>1301</p> <p>1 A Yes, that would be correct.</p> <p>2 Q What specific portions or assets of ProcureNet's</p> <p>3 business were acquired by ePlus in 2001?</p> <p>4 A They acquired the procurement and catalog systems.</p> <p>5 All the associated things that would go with that such</p> <p>6 as the documentation. They acquired the patents that</p> <p>7 we've been talking about that are in dispute here.</p> <p>8 And they also acquired the people that were associated</p> <p>9 with those applications.</p> <p>10 Q How many employees from ProcureNet joined ePlus as</p> <p>11 part of the acquisition?</p> <p>12 A Mid thirties, 35 or 38 or so.</p> <p>13 Q Do any of those employees from ProcureNet still</p> <p>14 work at ePlus?</p> <p>15 A For the most part, they all work at ePlus with the</p> <p>16 exception of a couple that have since retired.</p> <p>17 Q Have you been continuously employed by ePlus since</p> <p>18 you joined after the acquisition of ProcureNet?</p> <p>19 A I have.</p> <p>20 Q To whom do you report at ePlus?</p> <p>21 A I report to the CEO, Phillip Norton.</p> <p>22 Q You mentioned that you are the president of ePlus</p> <p>23 Systems and ePlus Content Services; is that correct?</p> <p>24 A Yes.</p> <p>25 Q Can you describe the businesses of those divisions</p>	<p>1303</p> <p>1 and then the system distributes those items once</p> <p>2 approved from one single requisition that creates</p> <p>3 multiple purchase orders to the suppliers and vendors</p> <p>4 that they're ordering from.</p> <p>5 Q Can you turn, please, to Plaintiff's Exhibit 448</p> <p>6 in your binder in front of you?</p> <p>7 A Okay.</p> <p>8 MR. McDONALD: I'm going to object to this</p> <p>9 line of questioning to the extent it goes into any</p> <p>10 detail about the ePlus products because that's not</p> <p>11 really relevant to the infringement issue because it</p> <p>12 compares the Lawson products to the patent.</p> <p>13 MR. STRAPP: Your Honor, I don't intend to go</p> <p>14 into any detail about the products.</p> <p>15 THE COURT: Why are you offering it?</p> <p>16 MR. STRAPP: It will become apparent in</p> <p>17 the --</p> <p>18 THE COURT: Can you make it apparent now in a</p> <p>19 word?</p> <p>20 MR. STRAPP: Yes. The bottom right-hand</p> <p>21 corner of the document, list the patents, I want to</p> <p>22 demonstrate that these products are marked with the</p> <p>23 patents that are in suit in this case.</p> <p>24 THE COURT: All right.</p> <p>25 MR. McDONALD: That's not an issue in the</p>

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<p>1304</p> <p>1 case anymore, Your Honor.</p> <p>2 MR. STRAPP: Marking goes to constructive</p> <p>3 knowledge of the patents, which is relevant to the</p> <p>4 issue we just discussed.</p> <p>5 MR. McDONALD: It is not relevant to notice</p> <p>6 to Lawson. It's just general public marking. That is</p> <p>7 not appropriate.</p> <p>8 MR. STRAPP: Your Honor, the witness will</p> <p>9 testify that the various products are marked, and we</p> <p>10 have testimony from Lawson witnesses that they have</p> <p>11 seen those products at trade shows back as far as</p> <p>12 2003. That information is relevant to knowledge.</p> <p>13 MR. McDONALD: The Lawson people have already</p> <p>14 testified. They never testified to that.</p> <p>15 THE COURT: I think one of them testified</p> <p>16 that he went to a trade show and looked at their</p> <p>17 products.</p> <p>18 MR. McDONALD: He said he saw the booth, but</p> <p>19 they never saw the products or any patent markings.</p> <p>20 THE COURT: He says there's no foundation</p> <p>21 because you haven't established that they actually</p> <p>22 looked at the products that have the marking.</p> <p>23 MR. STRAPP: Your Honor, first of all,</p> <p>24 circumstantial evidence is relevant to indirect</p> <p>25 infringement.</p>	<p>1306</p> <p>1 MR. STRAPP: Yes, Your Honor.</p> <p>2 THE COURT: Well, do you have it?</p> <p>3 MR. STRAPP: We have testimony from Lawson</p> <p>4 employees that they have known of ePlus. We have</p> <p>5 testimony from a Lawson employee that he attended a</p> <p>6 trade show in which ePlus had set up a booth</p> <p>7 demonstrating --</p> <p>8 THE COURT: But he says that's before he even</p> <p>9 was an ePlus employee. Is that right?</p> <p>10 MR. McDONALD: Lawson.</p> <p>11 THE COURT: I mean a Lawson employee. Is</p> <p>12 that right?</p> <p>13 MR. STRAPP: I don't know the answer to that</p> <p>14 one way or the other, Judge.</p> <p>15 THE COURT: Isn't that something you need to</p> <p>16 know to establish the foundation.</p> <p>17 MR. STRAPP: Well, Your Honor, I believe</p> <p>18 under the case law, even if we don't have direct</p> <p>19 evidence, circumstantial evidence is sufficient to at</p> <p>20 least go to the jury so that they can consider whether</p> <p>21 or not there is sufficient evidence for the indirect</p> <p>22 infringement claim.</p> <p>23 THE COURT: All right. Anything else?</p> <p>24 MR. McDONALD: No, Your Honor.</p> <p>25 THE COURT: Objection overruled. The</p>
<p>1305</p> <p>1 Secondly, we believe there is direct evidence</p> <p>2 that we have established through Mr. Lohkamp's</p> <p>3 testimony.</p> <p>4 And third, under the case law --</p> <p>5 THE COURT: Evidence of what?</p> <p>6 MR. STRAPP: That Lawson employees knew of</p> <p>7 ePlus, that they have seen ePlus --</p> <p>8 THE COURT: Somebody said they knew about</p> <p>9 ePlus, but that's not the point. The point is did</p> <p>10 they see these patents or these products that had the</p> <p>11 notice of the patent on them.</p> <p>12 MR. McDONALD: Mr. Lohkamp's testimony about</p> <p>13 seeing ePlus at the trade show was in 2003 before he</p> <p>14 even worked for Lawson. So there's no evidence that a</p> <p>15 Lawson employee saw that.</p> <p>16 MR. STRAPP: Your Honor, there's evidence</p> <p>17 that Lawson has known of ePlus. There's</p> <p>18 circumstantial evidence at least that Lawson knows</p> <p>19 that ePlus competes in this particular marketplace.</p> <p>20 EPlus marks its website, its software, and under the</p> <p>21 case law, marking is evidence of constructive</p> <p>22 knowledge of the patents, which can be relevant to</p> <p>23 indirect infringement.</p> <p>24 THE COURT: Yes, it is. But do you</p> <p>25 understand the concept of linkage, foundation?</p>	<p>1307</p> <p>1 exhibits and testimony right now is admitted for the</p> <p>2 limited purpose of whether or not Lawson may have</p> <p>3 knowledge of ePlus and their patents. EPlus as a</p> <p>4 competitor and their patents.</p> <p>5 BY MR. STRAPP:</p> <p>6 Q Mr. Farber, can you just tell me briefly what this</p> <p>7 document is?</p> <p>8 A Sure. This is a document, which I believe</p> <p>9 describes at a high level a little bit about the</p> <p>10 functionality and features of the Procure Plus</p> <p>11 product.</p> <p>12 Q Can I direct your attention to the bottom</p> <p>13 right-hand corner of the first page of this document?</p> <p>14 A Yes.</p> <p>15 Q Do you see there a list of U.S. patent numbers?</p> <p>16 A I do.</p> <p>17 Q Do you recognize any of those patents numbers as</p> <p>18 patents that are at issue in this case?</p> <p>19 A Yes.</p> <p>20 Q Are those the first three patents listed there?</p> <p>21 A Yes, they are.</p> <p>22 Q Can you explain to me why it is that ePlus has</p> <p>23 decided to mark this particular Procure Plus brochure</p> <p>24 with the three patents numbers that are at issue in</p> <p>25 this case?</p>

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<p>1308</p> <p>1 A Well, it's my understanding from working with our</p> <p>2 counsel that when you have a patents marking, it is a</p> <p>3 necessity, and it's a form of providing general notice</p> <p>4 to the industry that you have patents.</p> <p>5 So we mark things that are publicly disseminated.</p> <p>6 Q Let me ask you to turn to Plaintiff's Exhibit 417,</p> <p>7 please. What is this document, Mr. Farber?</p> <p>8 MR. McDONALD: For the record, I have the</p> <p>9 exact same objections. I think I know what you're</p> <p>10 going to say, but I just want to make sure you know I</p> <p>11 have the same objections to this one.</p> <p>12 THE COURT: Are these the same kind of</p> <p>13 documents, it's just another kind of product?</p> <p>14 MR. STRAPP: Correct. We've discussed --</p> <p>15 THE COURT: Is that what it is?</p> <p>16 MR. McDONALD: Yes, it is, Your Honor, and I</p> <p>17 guess you did have a limiting instruction. So I'd at</p> <p>18 least request the same limiting instruction.</p> <p>19 THE COURT: Well, this Exhibit 417 and this</p> <p>20 testimony is, again, limited to -- for you to consider</p> <p>21 as evidence respecting whether Lawson is on notice of</p> <p>22 ePlus as a competitor and its patents that are at</p> <p>23 issue in this case. That's the only purpose that this</p> <p>24 is admitted to.</p> <p>25 BY MR. STRAPP:</p>	<p>1310</p> <p>1 soon as they login. Anybody that goes to our website</p> <p>2 sees markings at numerous locations on our website.</p> <p>3 Our printed materials, our documentation, information</p> <p>4 that we hand out at things like trade shows are also</p> <p>5 marked. So it's basically we try to mark everything</p> <p>6 that's publicly disseminated.</p> <p>7 Q Since when has ePlus marked its products and its</p> <p>8 literature?</p> <p>9 A I think that was since 2002, if I'm not mistaken.</p> <p>10 Q What types of customers does ePlus target for</p> <p>11 these Procure Plus and Content Plus products?</p> <p>12 A In terms of who we try to attract and sell to, I</p> <p>13 would say the mid market.</p> <p>14 Q What do you mean by "mid market"?</p> <p>15 A Well, similar type customers that Lawson, you</p> <p>16 know, talked about earlier in the week. You know,</p> <p>17 they're not necessarily the largest. They're not</p> <p>18 necessarily the smallest. They fall within a range.</p> <p>19 It can be, you know, a company that may be in revenue,</p> <p>20 does, you know, 50 million to 2 1/2 billion. That's a</p> <p>21 very wide range, but that's what's considered mid</p> <p>22 market in industry terms.</p> <p>23 Q Do you know whether or not ePlus competes with</p> <p>24 Lawson for sales of its e-Procurement software?</p> <p>25 A Yes.</p>
<p>1309</p> <p>1 Q Mr. Farber, this is Plaintiff's Exhibit 417?</p> <p>2 A It's a similar document and brochure that shows up</p> <p>3 in written form and on the website that relates to our</p> <p>4 product information management solutions.</p> <p>5 Q Which product specifically does this relate to?</p> <p>6 A Catalog and Content Plus.</p> <p>7 Q Can you take a look at the bottom right-hand</p> <p>8 corner of this document, please?</p> <p>9 A Yes.</p> <p>10 Q Do you see there a list of U.S. patent numbers?</p> <p>11 A I do.</p> <p>12 Q Do you see the same three U.S. patent numbers</p> <p>13 listed first there that we had discussed with respect</p> <p>14 to Plaintiff's Exhibit 443?</p> <p>15 A Yes.</p> <p>16 Q I'm sorry, 448.</p> <p>17 Are these the three patents that are at issue in</p> <p>18 this lawsuit?</p> <p>19 A Yes, that's the '683, the '516, and the '172</p> <p>20 patent.</p> <p>21 Q What types of additional documents or other</p> <p>22 documents, if any, does ePlus mark with '683, '516 and</p> <p>23 '172 patents?</p> <p>24 A We mark the products themselves so that when</p> <p>25 people utilize the system, they see the patents as</p>	<p>1311</p> <p>1 Q How do you know that ePlus competes with Lawson?</p> <p>2 A Well, I know through personal conversations that I</p> <p>3 have with prospects and meetings that I attend, sales</p> <p>4 meetings with my sales executives or account</p> <p>5 representatives that are meeting with prospects to try</p> <p>6 to sell them a solution.</p> <p>7 Q Any other ways that you know?</p> <p>8 A Yeah. That's one way. Other ways, through emails</p> <p>9 at times that, you know, these prospects would send to</p> <p>10 my sales organizations that I get copied on. And</p> <p>11 sometimes in situations where you're on a conference</p> <p>12 call, you know, with a lot of vendors, you know, and</p> <p>13 the prospect that's looking to buy a solution would</p> <p>14 generally ask some general questions so that, you</p> <p>15 know, they give the benefit to all the vendors to hear</p> <p>16 the answer.</p> <p>17 And sometimes there may be occasion to hear of a</p> <p>18 competitor situation that way as well.</p> <p>19 Q Like the Lawson employees we've heard testimony</p> <p>20 from, do you also pay attention to industry analyst</p> <p>21 reports?</p> <p>22 A I do.</p> <p>23 Q Can you please turn to Plaintiff's Exhibit 463.</p> <p>24 A 463?</p> <p>25 Q That's correct.</p>

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<p>1316</p> <p>1 the RFP process from Lawson consistent with your</p> <p>2 understanding of how the RFP process works for</p> <p>3 e-Procurement software?</p> <p>4 A Yes, I believe so.</p> <p>5 Q When ePlus receives an RFP, does ePlus itself</p> <p>6 draft a response and ensure that the response that it</p> <p>7 gives to the RFP is accurate?</p> <p>8 A Yes, ePlus would draft the response, yes.</p> <p>9 Q In addition to industry analyst reports, what</p> <p>10 other types of media or publications do you follow to</p> <p>11 try to keep abreast of trends or developments in the</p> <p>12 e-Procurement industry?</p> <p>13 A In addition, to analysts reports?</p> <p>14 Q Correct.</p> <p>15 A There's a lot of sources. You know, we do --</p> <p>16 besides the reports, you get to have briefings with</p> <p>17 the analysts. We actually sit down and they disclose</p> <p>18 some information to you about competition. There's</p> <p>19 times where we follow -- not times. We do follow a</p> <p>20 number of different trade magazines. There's web</p> <p>21 based information such as blogs that are written now</p> <p>22 in this discipline of procurement sourcing and catalog</p> <p>23 management.</p> <p>24 There's the competitors websites that we looked at</p> <p>25 very often to see what the competitors are doing and</p>	<p>1318</p> <p>1 industry, including the president of ePlus keeps track</p> <p>2 of what's going on in the industry.</p> <p>3 THE COURT: Objection sustained.</p> <p>4 BY MR. STRAPP:</p> <p>5 Q All right. Mr. Farber, you heard some testimony</p> <p>6 that individuals at Lawson consider publications from</p> <p>7 Gartner, I think that's an industry analyst, to be</p> <p>8 some of the most reliable industry publications. Is</p> <p>9 that consistent with your understanding as well?</p> <p>10 A That's what they said, yes.</p> <p>11 THE COURT: The question is: Is it</p> <p>12 consistent with your understanding?</p> <p>13 THE WITNESS: That Gartner is a widely</p> <p>14 recognized --</p> <p>15 Q And reliable publication?</p> <p>16 A For the most part.</p> <p>17 Q Is Gartner an industry analyst report that ePlus</p> <p>18 subscribes to?</p> <p>19 A We have.</p> <p>20 Q Have you personally reviewed Gartner research</p> <p>21 reports and industry analyst reports?</p> <p>22 A I have.</p> <p>23 Q I'd like you to turn, please, to Plaintiff's</p> <p>24 Exhibit 325.</p> <p>25 A I don't know that I have a 325. Here it is. It's</p>
<p>1317</p> <p>1 try to gain insight based on whatever public</p> <p>2 information is available to help us position our</p> <p>3 products and solutions.</p> <p>4 Q Do you know whether in these types of publications</p> <p>5 you've been discussing there's ever been any mention</p> <p>6 of ePlus or its patents?</p> <p>7 A Yes.</p> <p>8 Q What are you referring to specifically?</p> <p>9 A There have been authors that have written things</p> <p>10 on blogs, on websites. There have been newspaper</p> <p>11 articles, trade magazines widely published --</p> <p>12 MR. McDONALD: Your Honor, we already went</p> <p>13 through these issues as to foundations for some</p> <p>14 exhibit that's been excluded. Now he's talking about</p> <p>15 the same thing. That has been excluded.</p> <p>16 THE COURT: It sounds to me like it.</p> <p>17 MR. STRAPP: Your Honor, I wasn't planning to</p> <p>18 go into any detail about these exhibits or show them,</p> <p>19 obviously. I was just asking about his personal</p> <p>20 knowledge as the president of ePlus, what does he do</p> <p>21 to keep abreast of industry developments.</p> <p>22 THE COURT: What's that got to do with</p> <p>23 anything in the case?</p> <p>24 MR. STRAPP: It's relevant to understanding</p> <p>25 how the marketplace works and how people in the</p>	<p>1319</p> <p>1 out of order. Okay. I got it.</p> <p>2 Q It's also up on the screen for your reference if</p> <p>3 you want to see a larger version there.</p> <p>4 A Okay.</p> <p>5 Q Does this appear, Mr. Farber, to be a Gartner</p> <p>6 research report?</p> <p>7 A Yes.</p> <p>8 Q And is this the type of Gartner research report</p> <p>9 that you have reviewed in the past?</p> <p>10 A Yes.</p> <p>11 Q What's the date of this particular Gartner</p> <p>12 research report?</p> <p>13 A This is February 17, 2005.</p> <p>14 Q What is the title of this report?</p> <p>15 A Ariba/ePlus settlement could spark more patent</p> <p>16 lawsuits.</p> <p>17 Q From reading that title, what do you understand</p> <p>18 the subject matter of this particular report to be?</p> <p>19 A On the subject line, it's referring to a</p> <p>20 settlement agreement that Ariba and ePlus had</p> <p>21 pertaining to a certain number of our patents, and</p> <p>22 Gartner, you know, is letting people know that it</p> <p>23 could potentially result in some more litigation or</p> <p>24 lawsuits.</p> <p>25 Q What patents were the subject of this patent</p>

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<p>1320</p> <p>1 infringement settlement referenced in the Gartner 2 report? 3 A The same ones that are at issue here today. 4 Q The three patents that are at issue in this case? 5 A That's correct. 6 Q All three of those were at issue in this Ariba 7 and ePlus litigation? 8 A Yes, that's correct. 9 Q What is the recommendation here at the second 10 sentence of the first page? 11 A Starting with investigate, investigate the risk of 12 challenges to your products and whether others have 13 infringed on your patents. 14 Q What do you understand that to mean? 15 A They are giving advice, the research analysts -- 16 MR. McDONALD: Objection, Your Honor. I 17 don't think the witness can interpret the report. 18 THE COURT: Sustained. 19 Q Let's turn to the next page of the document, 20 please. 21 THE COURT: Ladies and gentlemen, this 22 document is admitted for a limited purpose. Whether 23 or not Ariba and ePlus settled a lawsuit involving the 24 infringement of this case, I mean of the 25 patents-in-suit in this case, is not one of -- is</p>	<p>1322</p> <p>1 recommendations for ISVs. Is ISV a term that's used 2 in the supply chain management industry? 3 A It's used in the computer industry. 4 Q What does it refer to? 5 A It means independent software vendors. Those 6 vendors that develop and install software. 7 Q Is ePlus an ISV? 8 A Yes. 9 Q Is Lawson an ISV? 10 A Yes. 11 Q What recommendations is Gartner providing to 12 companies like ePlus and Lawson in this particular 13 Gartner research report? 14 A What Gartner is recommending is to make sure that 15 your innovations are patented, which is the marking 16 that we talked about earlier, and then do an extensive 17 review of the functionality of your software against 18 patents that are known to be in dispute. 19 MR. McDONALD: Your Honor, we don't need this 20 witness to read this document to us. I object. 21 THE COURT: I think that's enough. 22 MR. STRAPP: I have no further ear questions. 23 Thank you for your time, Mr. Farber. 24 THE COURT: Cross-examination. 25</p>
<p>1321</p> <p>1 admitted only for the purpose of whether -- for you to 2 to consider as evidence of whether Lawson knew about 3 ePlus and the patents-in-suit in the case in view of 4 the fact that one of the witnesses from Lawson 5 testified about reviewing the Gartner reports as a 6 regular proposition. 7 You may not conclude from this information 8 that because Ariba thought it might have infringed 9 ePlus' patents and reached a settlement of that matter 10 that Lawson infringes those same patents, but you can 11 consider the evidence of whether Lawson knew about 12 ePlus as a competitor and ePlus' patents, and also in 13 deciding on some of the as, I'll tell you later, some 14 of the defenses that have been offered in the case by 15 Lawson. And those are the limited purposes. 16 Are there any other requests for limiting 17 instruction other than what I just gave? 18 MR. McDONALD: No, Your Honor. Thank you. 19 THE COURT: All right. 20 Q Mr. Farber, I'd like to direct your attention to 21 the bottom of the second page of this Gartner report. 22 Do you see that there are some recommendations listed 23 there in bullet points? 24 A Yes. 25 Q I want you to take a look in particular at the</p>	<p>1323</p> <p>1 CROSS-EXAMINATION 2 BY MR. McDONALD: 3 Q Good afternoon, Mr. Farber. 4 EPlus never gave Lawson any notice of these 5 patents directly before they sued them, did they? 6 A No. 7 Q And so the first time there's a direct 8 communication between ePlus and Lawson is when ePlus 9 filed a complaint and served that complaint on Lawson? 10 A Yes, that's my understanding. That's the way we 11 were instructed to do that. 12 Q That was in May of 2009; is that correct? 13 A I believe that's correct, yes. 14 Q You talked at the beginning of your testimony 15 about some documents that you said put the patent 16 number out there in the public so that the public 17 would see you had these patents numbers. Do you 18 remember that? 19 A I said that we put the information out because it 20 was our understanding that that's how you have to 21 disseminate the patent, and we put it on documents 22 that are publicly available. 23 Q And those documents that you picked as examples of 24 those publicly available documents, those are a couple 25 of exhibits that were put up on the computer monitors</p>

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<p style="text-align: right;">1352</p> <p style="text-align: center;">1352</p> <p>1 REDIRECT EXAMINATION</p> <p>2 BY MR. STRAPP:</p> <p>3 Q I'm going to ask Lawson to put back up on the</p> <p>4 screen the press release that was shown to you,</p> <p>5 Mr. Farber.</p> <p>6 Mr. Farber, what's the purpose of ePlus' press</p> <p>7 releases generally? Why does ePlus issue press</p> <p>8 releases?</p> <p>9 A A press release is issued to, you know, let the</p> <p>10 industry know what's going on at ePlus and what we</p> <p>11 think are notable events.</p> <p>12 Q Do you see at the top of this document there's a</p> <p>13 date, July 21, 2003? Do you see that?</p> <p>14 A Yes.</p> <p>15 Q Right above it, it says "market wire." What's</p> <p>16 your understanding of market wire? What does that</p> <p>17 imply about where this was disseminated to?</p> <p>18 A Market wire is a public relations organization</p> <p>19 that picks up will press releases and then</p> <p>20 redistributes them on their own vehicles of</p> <p>21 communication.</p> <p>22 Q So who would have been the target audience of a</p> <p>23 press release about ePlus' patent and the subject</p> <p>24 matter of the patent?</p> <p>25 A Well, it would have had a very broad distribution.</p>	<p style="text-align: right;">1354</p> <p style="text-align: center;">FARBER - REDIRECT 1354</p> <p>1 A Trade shoes. Information that's, you know, widely</p> <p>2 available and nonrestricted on our websites.</p> <p>3 Q For example, at an industry trade show, can anyone</p> <p>4 walk up, take a product brochure and walk away?</p> <p>5 A Absolutely.</p> <p>6 Q Can anyone go to the ePlus website and see the</p> <p>7 patent numbers marked there?</p> <p>8 A Yes.</p> <p>9 MR. STRAPP: No further questions.</p> <p>10 THE COURT: All right. You may step down,</p> <p>11 sir.</p> <p>12 (The witness was excused from the witness</p> <p>13 stand.)</p> <p>14 MR. ROBERTSON: Your Honor, we have a few</p> <p>15 housekeeping matters to take care of, a few</p> <p>16 stipulations to read into the record. If you'd like,</p> <p>17 I can do that now.</p> <p>18 THE COURT: The lunches are here. I think</p> <p>19 I'll let you-all clean up and get things straightened</p> <p>20 out. We'll take one hour for lunch. You can take</p> <p>21 your notebooks with you.</p> <p>22 (The jury is out.)</p> <p>23 THE COURT: Do you have something,</p> <p>24 Mr. Robertson, you wanted to give me that I had asked</p> <p>25 for or something and I told you to do it after the</p>
<p style="text-align: right;">1353</p> <p style="text-align: center;">FARBER - REDIRECT 1353</p> <p>1 Certainly, you know, to ISVs and certain customers</p> <p>2 that look at the releases. The financial world as</p> <p>3 well.</p> <p>4 Q This press release specifically mentions one of</p> <p>5 the patent numbers that's at issue in this case,</p> <p>6 doesn't it? The '172?</p> <p>7 A Yes.</p> <p>8 Q You were asked a few questions by Mr. McDonald</p> <p>9 regarding marking. Do you recall that?</p> <p>10 A Yes.</p> <p>11 Q Does ePlus mark any of its products or patent</p> <p>12 literature that is disseminated publicly without</p> <p>13 restriction?</p> <p>14 A Yes.</p> <p>15 Q Which particular --</p> <p>16 MR. McDONALD: Objection. This is already</p> <p>17 covered.</p> <p>18 THE COURT: Overruled.</p> <p>19 Q Which particular products or product literature</p> <p>20 are marked with a patent that aren't restricted in any</p> <p>21 way?</p> <p>22 A Sales brochures, sales presentations that are</p> <p>23 provided at either a prospect's or industry conference</p> <p>24 that we speak at.</p> <p>25 Q Trade shoes?</p>	<p style="text-align: right;">1355</p> <p style="text-align: center;">1355</p> <p>1 examination at the break?</p> <p>2 MR. ROBERTSON: Yes, sir. Two thinks, Your</p> <p>3 Honor. The first issue had to do with this deposition</p> <p>4 destination of that was Kristy Oliver.</p> <p>5 THE COURT: And the issue there was whether</p> <p>6 Lawson had designated that part of it on item No. 18,</p> <p>7 page 29, as a fairness designation or whether you had</p> <p>8 designated it.</p> <p>9 MR. ROBERTSON: Yes, sir, and we have the</p> <p>10 answer to that question.</p> <p>11 THE COURT: And the answer is?</p> <p>12 MR. ROBERTSON: It was Lawson. And let me</p> <p>13 direct you to where you can find it.</p> <p>14 THE COURT: Do you all agree?</p> <p>15 MR. SCHULTZ: Yes.</p> <p>16 THE COURT: All right.</p> <p>17 MR. McDONALD: It was ePlus' counsel that</p> <p>18 asked it during the actual taking of the deposition,</p> <p>19 but we at Lawson actually designated it for the</p> <p>20 reading.</p> <p>21 THE COURT: All right. The fact that ePlus</p> <p>22 asked it but didn't offer it doesn't change the</p> <p>23 fundamental issue, and that is who opened the door at</p> <p>24 the trial. So this doesn't open the door.</p> <p>25 MR. McDONALD: We put it in without their</p>

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1 And there's also a case called SEB from the Federal  
2 Circuit which has to do with the standard of intent  
3 for the inducement infringement, which I understand  
4 also includes a reckless disregard for the patent.

5 THE COURT: I want you to give Ms. Haggard  
6 the citations for those two cases, plus --

7 MR. ROBERTSON: Let me be candid with the  
8 Court.

9 THE COURT: What is it?

10 MR. McDONALD: Akamai.

11 THE COURT: Akamai?

12 MR. ROBERTSON: Akamai is how it's  
13 pronounced.

14 THE COURT: I can't pronounce it. All right.  
15 I want you to give her the cites, so I make sure I've  
16 read those while I'm working on the instructions.

17 MR. ROBERTSON: The Supreme Court has granted  
18 a writ of certiorari with respect to this SAB case I  
19 just referenced. But the Federal Circuit just came  
20 down with a case I think in the last week that said  
21 that the pendency of a writ of certiorari has no  
22 impact whatsoever on what the state of the law is.

23 THE COURT: Why did the Federal Circuit feel  
24 compelled to decide that? I think that's been the law  
25 forever.

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1 MR. ROBERTSON: I think it was because one of  
2 the litigants made the argument.

3 THE COURT: I understood that to be the case  
4 for as long as I've been practicing law.

5 MR. ROBERTSON: All right. Thank you, Your  
6 Honor.

7 THE COURT: All right. Thank you all very  
8 much. Give the citations to her tonight so she can  
9 print those out for me. Give her the books and we'll  
10 be ready to go.

11 Thank you very much.

12  
13 (The proceedings were adjourned at 5:34 p.m.)

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<p>1490</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 5 ----- 6 ePLUS, INC. : Civil Action No.  : 3:09CV620 7 vs. :  : 8 LAWSON SOFTWARE, INC. : January 13, 2011  : 9 ----- 10 11 COMPLETE TRANSCRIPT OF THE JURY TRIAL 12 BEFORE THE HONORABLE ROBERT E. PAYNE 13 UNITED STATES DISTRICT JUDGE, AND A JURY 14 15 APPEARANCES: 16 Scott L. Robertson, Esquire 17 Michael G. Strapp, Esquire 18 Jennifer A. Albert, Esquire 19 David M. Young, Esquire 20 Goodwin Procter, LLP 21 901 New York Avenue NW 22 Suite 900 23 Washington, D.C. 20001 24 Craig T. Merritt, Esquire 25 Christian &amp; Barton, LLP 909 East Main Street Suite 1200 Richmond, Virginia 23219-3095 Counsel for the plaintiff  Peppy Peterson, RPR Official Court Reporter United States District Court</p>	<p>1492</p> <p>1 P R O C E E D I N G S 2 3 THE CLERK: Civil action number 3:09CV620, ePlus, 4 Incorporated, versus Lawson Software, Incorporated. Mr. Scott 5 L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, and 6 Mr. Michael G. Strapp represent the plaintiff. 7 Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms. 8 Kirstin L. Stoll-DeBell, and Mr. William D. Schultz represent 9 the defendant. Are counsel ready to proceed? 10 MR. ROBERTSON: Plaintiff is, Your Honor. Thank you. 11 MR. McDONALD: Yes, Your Honor. Thank you. 12 THE COURT: Do you need to see me about something 13 before the jury comes in? 14 MR. ROBERTSON: Yes, Your Honor. You had asked us to 15 take a look at those appendices with respect to our motion on 16 this implementation on a customer-by-customer basis. 17 THE COURT: Yeah. 18 MR. ROBERTSON: We have done that, and the reason I 19 raised it, Your Honor, is one of the witnesses that's going to 20 be called this morning is Ms. Hannah Raleigh. You may recall 21 she testified once already. She is involved with Lawson 22 Professional Services that has to do -- that has responsibility 23 for implementation of the Lawson software products, and we're 24 concerned that she's going to be getting into areas in and 25 presenting testimony that Lawson is going to contend are</p>
<p>1491</p> <p>1 APPEARANCES: (cont'g) 2 Dabney J. Carr, IV, Esquire 3 Troutman Sanders, LLP 4 Troutman Sanders Building 5 1001 Haxall Point 6 Richmond, Virginia 23219 7 Daniel W. McDonald, Esquire 8 Kirstin L. Stoll-DeBell, Esquire 9 William D. Schultz, Esquire 10 Merchant &amp; Gould, PC 11 80 South Eighth Street 12 Suite 3200 13 Minneapolis, Minnesota 55402 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1493</p> <p>1 defenses to infringement later that are directly implicated by 2 that interrogatory number 24. 3 What I have provided Your Honor with is the 4 appendices that were referenced in the answers to the 5 interrogatories, the transcript from the March 26th hearing, 6 telephonic hearing on the motion to compel, and the relevant 7 citations to the transcript where this issue came up, and I do 8 want to continue to press the motion, Your Honor. 9 We do think that the answers, even with the 10 appendices, were nowhere near what was called for and what Your 11 Honor directed Lawson to do in response to that. 12 If I might just, Your Honor, you may recall that 13 these appendices that are being referenced were provided to 14 ePlus three months before the motion to compel was presented, 15 and the appendices do not respond to the interrogatory as 16 represented by counsel for Lawson. 17 Indeed, if you look at some of the appendices, for 18 example -- 19 THE COURT: Is A appendix A? 20 MR. ROBERTSON: Yes, sir. Under the tab December 23, 21 2009, response to interrogatory number -- yeah, A is one. 22 THE COURT: March 26th is the first tab, the 23 transcript, and then there's an A behind that. Is that 24 appendix A or not? 25 MR. ROBERTSON: I believe appendix A, Your Honor, is</p>



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<p>1506</p> <p>1 should I try this, should I not try this, I'm having some</p> <p>2 issues here, can you help us out, and we'll take a look at</p> <p>3 that. Those are always phone calls or site visits, sometimes</p> <p>4 they come up and see us.</p> <p>5 Q I'm going to ask you a couple of questions about Lawson</p> <p>6 generally.</p> <p>7 A Sure.</p> <p>8 Q What kinds of products does Lawson sell?</p> <p>9 A Software and then services to help service that software</p> <p>10 and then clearly the maintenance.</p> <p>11 Q Does Lawson sell computer systems?</p> <p>12 A No, it does not.</p> <p>13 Q Does Lawson sell any kind of computer hardware?</p> <p>14 A No, it does not.</p> <p>15 Q I'm going to ask you a few questions about Lawson system</p> <p>16 foundation.</p> <p>17 A Sure.</p> <p>18 Q At a high level, what is LSF?</p> <p>19 A Lawson system foundation, it is a basis for the 4GL,</p> <p>20 Lawson 4GL applications such as purchase order, requisitions or</p> <p>21 RQ, and inventory control. They need that in order to operate,</p> <p>22 but not only do they need it to operate it, they need it in</p> <p>23 order to actually be compiled.</p> <p>24 The programming language by itself my developers actually</p> <p>25 work in is an extension of COBOL but doesn't always necessarily</p>	<p>1508</p> <p>1 THE COURT: Okay, done. Now we don't need to talk</p> <p>2 about anything else. Stay with the accused products.</p> <p>3 Q I'm going to ask you, or I'm going to turn now to the item</p> <p>4 master database --</p> <p>5 A Sure.</p> <p>6 Q -- and ask you some questions about that.</p> <p>7 A Uh-huh.</p> <p>8 Q When Lawson sells its software to its customers, is there</p> <p>9 any item data in the item master database?</p> <p>10 A No, there's not.</p> <p>11 Q Why does Lawson sell it that way, with no item data in it?</p> <p>12 A Essentially we don't know what the customers are going to</p> <p>13 want to have in the database. It's configurable in a variety</p> <p>14 of ways.</p> <p>15 THE COURT: Essentially, you don't know; that's the</p> <p>16 answer. Keep the question and the answer -- and the best way</p> <p>17 to keep an examination moving is for you to take control of the</p> <p>18 questions and not be -- we don't need a general dissertation of</p> <p>19 things. We need to have the questions asked and answered.</p> <p>20 Q Would item master work if it included only items from a</p> <p>21 single vendor?</p> <p>22 A Yes.</p> <p>23 Q Would item master work if it included only items that were</p> <p>24 already owned by the customer?</p> <p>25 A Yes.</p>
<p>1507</p> <p>1 look like COBOL. The program files, when you look at it, is</p> <p>2 completely dispersed through a variety of things, and LSF pulls</p> <p>3 it all together into an actual COBOL program. We don't</p> <p>4 actually see that. That's a machine that does that.</p> <p>5 Q Other than -- are Lawson software modules other than the</p> <p>6 accused products in this case also hosted on top of LSF?</p> <p>7 A That is correct.</p> <p>8 Q Can you give me a few examples of modules that are hosted</p> <p>9 on LSF other than the accused products in this case?</p> <p>10 A When I talked about the financial suite and the HR suite</p> <p>11 --</p> <p>12 THE COURT: Why are we getting into this? It's hard</p> <p>13 enough to follow this technical material without getting into</p> <p>14 something that isn't an issue. Let's just stay with what's at</p> <p>15 issue and get right to the point, okay? That doesn't make any</p> <p>16 difference what else is hosted.</p> <p>17 MS. STOLL-DeBELL: Well, I think it goes to the fact</p> <p>18 that LSF -- what are the accused products and that LSF works</p> <p>19 with things other than that.</p> <p>20 MR. ROBERTSON: I'll stipulate that LSF works with</p> <p>21 the other products as long as you stipulate it works with the</p> <p>22 accused products.</p> <p>23 MS. STOLL-DeBELL: I think we do.</p> <p>24 THE COURT: Do you or not?</p> <p>25 MS. STOLL-DeBELL: We do.</p>	<p>1509</p> <p>1 Q Can item master be stored in a local database at the</p> <p>2 customer's location?</p> <p>3 A Yes, it may.</p> <p>4 Q Can item master include item records for items owned by</p> <p>5 the customer?</p> <p>6 A Yes.</p> <p>7 Q Can item master records include a customer's part number?</p> <p>8 A Yes, it can.</p> <p>9 Q Can item master records include the manufacturer or</p> <p>10 supplier's catalog or part number?</p> <p>11 A Yes.</p> <p>12 Q Do item master records include a default unit of measure?</p> <p>13 A Yes, it does.</p> <p>14 Q Do item master records include an item description?</p> <p>15 A Yes, it does.</p> <p>16 Q Do item master records include the quantity of items</p> <p>17 available in the customer-owned inventory?</p> <p>18 A For stock items, yes.</p> <p>19 Q Do item master records include price?</p> <p>20 A Yes.</p> <p>21 MS. STOLL-DeBELL: If we can go to PX-361.</p> <p>22 MR. ROBERTSON: Your Honor, I'm going to object.</p> <p>23 This is a demonstrative that Dr. Weaver did that was never</p> <p>24 introduced. This witness -- so it's not in evidence.</p> <p>25 THE COURT: Could I see it?</p>

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<p style="text-align: right;">1566</p> <p>CHRISTOPHERSON - DIRECT 1566</p> <p>1 THE COURT: Can you tell?</p> <p>2 THE WITNESS: I can tell.</p> <p>3 THE COURT: Now the next question is how do</p> <p>4 you tell because that's the foundational question.</p> <p>5 Q How do you tell?</p> <p>6 A How do you tell? When we open up a window, which</p> <p>7 is what's occurred here, when you have selected, in</p> <p>8 this case I believe it's Staples link, a brand new web</p> <p>9 page is opened up. And there's a frame put on that.</p> <p>10 That frame is much like a picture frame. In this</p> <p>11 case, really closer to a digital picture frame.</p> <p>12 So the outside of the frame looks like the frames</p> <p>13 in any of the pictures here. You can put a label on</p> <p>14 that frame. The label is Lawson. We happen to put</p> <p>15 our logo, our brand, always with Punchout since we've</p> <p>16 come out with that product always in the upper</p> <p>17 left-hand corner.</p> <p>18 Everything below that is the picture. So we have</p> <p>19 created the frame, but we don't care what happens</p> <p>20 inside of that picture. At that point everything</p> <p>21 below that is being run by and controlled by the</p> <p>22 vendor.</p> <p>23 Q Okay. So in this slide you can see there's a list</p> <p>24 of categories?</p> <p>25 A Yes.</p>	<p style="text-align: right;">1568</p> <p>CHRISTOPHERSON - DIRECT 1568</p> <p>1 THE COURT: In view of what you said earlier,</p> <p>2 whose software is providing the whole page?</p> <p>3 THE WITNESS: The whole page, Your Honor, is</p> <p>4 actually being constructed by two parties. You've got</p> <p>5 the very -- actually, three parties. You've got in</p> <p>6 this case Internet Explorer is done by Microsoft.</p> <p>7 That's creating the blue bar and the borders around</p> <p>8 it. Right below that is Lawson. So you have the</p> <p>9 Lawson logo. All we're putting up is an image of that</p> <p>10 and it enters blank space.</p> <p>11 THE COURT: Whose software is being used to</p> <p>12 enable me to view this?</p> <p>13 THE WITNESS: To enable you to view it? It</p> <p>14 would be Microsoft. It's Internet Explorer in this</p> <p>15 particular example. That's the browser that's being</p> <p>16 used.</p> <p>17 THE COURT: That's not what I'm asking.</p> <p>18 THE WITNESS: Sir, I didn't understand then.</p> <p>19 THE COURT: Do I have to have one of the</p> <p>20 Lawson systems in order to see what's on this screen?</p> <p>21 THE WITNESS: To use Punchout, yes.</p> <p>22 THE COURT: All right. Now I understand.</p> <p>23 Thank you.</p> <p>24 THE WITNESS: It would help maybe, Your</p> <p>25 Honor -- Punchout is what opens up --</p>
<p style="text-align: right;">1567</p> <p>CHRISTOPHERSON - DIRECT 1567</p> <p>1 Q Are you saying that that is controlled by the</p> <p>2 vendor?</p> <p>3 A Correct.</p> <p>4 Q And not Lawson?</p> <p>5 A Correct.</p> <p>6 Q We can go to the next page. And within the</p> <p>7 picture frame, do you see results of a search?</p> <p>8 A What I see is they have drilled down into the</p> <p>9 category further.</p> <p>10 Q Is it the vendors software that's providing that</p> <p>11 drill down of category?</p> <p>12 A Yes.</p> <p>13 Q And not Lawson?</p> <p>14 A Correct.</p> <p>15 Q Okay. If we can go to the page ending in 1269.</p> <p>16 It's a couple pages ahead. What is this showing?</p> <p>17 A In this case, they have selected some paper. And</p> <p>18 you can start seeing the item description, more</p> <p>19 information about that particular product.</p> <p>20 Q Is it the vendor software that's providing that</p> <p>21 item description and additional detail regarding that</p> <p>22 product?</p> <p>23 A Yes.</p> <p>24 Q And not Lawson?</p> <p>25 A Correct.</p>	<p style="text-align: right;">1569</p> <p>CHRISTOPHERSON - DIRECT 1569</p> <p>1 MR. ROBERTSON: Your Honor, I just object.</p> <p>2 The question has been answered.</p> <p>3 THE WITNESS: Okay.</p> <p>4 THE COURT: You may have objected to my</p> <p>5 question.</p> <p>6 MS. STOLL-DeBELL: I think he did actually.</p> <p>7 BY MS. STOLL-DeBELL:</p> <p>8 Q Okay. Are there some of these Punchout vendor</p> <p>9 websites that customers can go to without using</p> <p>10 Punchout?</p> <p>11 A Can you say that again?</p> <p>12 Q Yes. So, for example, Staples link, is that one</p> <p>13 of the Punchout vendors that can be used with Lawson's</p> <p>14 Punchout product?</p> <p>15 A Yes, it is.</p> <p>16 Q Okay. Can a customer use Stapleslink.com without</p> <p>17 having the Punchout product?</p> <p>18 A I do not know.</p> <p>19 MR. ROBERTSON: No objection.</p> <p>20 Q I think we're done with that line of questioning</p> <p>21 so I'm going to transition again for you.</p> <p>22 A Sure.</p> <p>23 Q While you take a drink.</p> <p>24 A That's okay. Go ahead.</p> <p>25 Q When did you first learn about ePlus' patents?</p>

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<p style="text-align: right;">1570</p> <p>CHRISTOPHERSON - DIRECT 1570</p> <p>1 A May 10, 2009.</p> <p>2 Q Is that when you first learned about the law suit</p> <p>3 that ePlus had filed against Lawson?</p> <p>4 A Yes.</p> <p>5 Q What did you do when you learned that ePlus had</p> <p>6 filed suit against Lawson for patent infringement?</p> <p>7 A What I first did was I got the three patents and</p> <p>8 reviewed those, read those.</p> <p>9 Q What did you think when you finished reading those</p> <p>10 patents?</p> <p>11 MR. ROBERTSON: Objection, Your Honor. This</p> <p>12 is calling for a legal conclusion and it's --</p> <p>13 THE COURT: I'm sorry?</p> <p>14 MR. ROBERTSON: It's calling for a legal</p> <p>15 conclusion, Your Honor, and it's not relevant.</p> <p>16 THE COURT: What did he think? Is that the</p> <p>17 question?</p> <p>18 MS. STOLL-DeBELL: Yes, what did he think.</p> <p>19 MR. ROBERTSON: It's a little vague and</p> <p>20 ambiguous, too.</p> <p>21 THE COURT: Well, I think maybe that's the</p> <p>22 right objection. Sustained.</p> <p>23 We have to have a more precise question to</p> <p>24 understand whether it's objectionable or not.</p> <p>25 MS. STOLL-DeBELL: Okay.</p>	<p style="text-align: right;">1572</p> <p>CHRISTOPHERSON - DIRECT 1572</p> <p>1 THE COURT: What he thought is the irrelevant</p> <p>2 to this case except with respect to the intent element</p> <p>3 of indirect infringement; is that right?</p> <p>4 MS. STOLL-DeBELL: Yes.</p> <p>5 THE COURT: This information can be</p> <p>6 considered by you, ladies and gentlemen, only in</p> <p>7 deciding whether or not a certain element of in</p> <p>8 direction infringement has been met, and that is</p> <p>9 whether there was an intent to have an infringement.</p> <p>10 And so you can consider it for that purpose and that</p> <p>11 purpose alone. And I'll give you some more</p> <p>12 instructions later about what indirect infringement</p> <p>13 is.</p> <p>14 But for your purposes, you can just keynote</p> <p>15 this testimony of what his reaction was goes to the</p> <p>16 intent to indirectly infringe or to have indirect</p> <p>17 infringement. Excuse me. Go ahead.</p> <p>18 Q Can you go ahead and answer the question?</p> <p>19 A Can you restate the question. It's been awhile.</p> <p>20 Q Sure. After you read the patents, what was your</p> <p>21 first reaction?</p> <p>22 A My first reaction was that it didn't appear as</p> <p>23 though we were actually doing that, the three patents.</p> <p>24 Q Why did you think it didn't appear that you were</p> <p>25 doing what was in the three patents?</p>
<p style="text-align: right;">1571</p> <p>CHRISTOPHERSON - DIRECT 1571</p> <p>1 BY MS. STOLL-DeBELL:</p> <p>2 Q After reading the patents, did you think Lawson</p> <p>3 had a problem with these patents?</p> <p>4 MR. ROBERTSON: Objection. That's an</p> <p>5 important question and that's leading.</p> <p>6 THE COURT: Well, it is. Sustained.</p> <p>7 BY MS. STOLL-DeBELL:</p> <p>8 Q What was your first reaction after reading the</p> <p>9 patents?</p> <p>10 MR. ROBERTSON: Objection, vague and</p> <p>11 ambiguous.</p> <p>12 MS. STOLL-DeBELL: Your Honor, I'm trying --</p> <p>13 THE COURT: I guess my basic inquiry here is</p> <p>14 why is it that what he thinks is relevant? To what</p> <p>15 issue does it go that this jury has to decide? That's</p> <p>16 the question. So just name the issue that it goes to.</p> <p>17 MS. STOLL-DeBELL: It goes to the intent</p> <p>18 element of indirect infringement. And Mr. Robertson</p> <p>19 actually asked Mr. Christopherson about this same</p> <p>20 topic when he put him on the stand in his case. And</p> <p>21 so it goes to that.</p> <p>22 MR. ROBERTSON: I didn't ask him anything</p> <p>23 about what he thought or his reaction or anything. I</p> <p>24 just asked him if he was aware that a lawsuit was</p> <p>25 filed and if he had notice since that date.</p>	<p style="text-align: right;">1573</p> <p>CHRISTOPHERSON - DIRECT 1573</p> <p>1 MR. ROBERTSON: Your Honor, now I'm going to</p> <p>2 object. This calls for a legal conclusion and an</p> <p>3 expert opinion.</p> <p>4 MS. STOLL-DeBELL: Your Honor, it doesn't.</p> <p>5 I'm asking him what he thought. I'm not asking him</p> <p>6 for his opinion. I'm not asking him about the claims.</p> <p>7 THE COURT: When you asked him what he</p> <p>8 thought, why isn't that asking him for an opinion?</p> <p>9 MS. STOLL-DeBELL: Well, I suppose it is a</p> <p>10 lay opinion on some level, but Mr. Robertson asked him</p> <p>11 what Lawson as a company did after this lawsuit was</p> <p>12 filed. And Mr. Christopherson was involved in that,</p> <p>13 and I'm just trying to inquire further into the issue</p> <p>14 of Lawson's intent.</p> <p>15 THE COURT: What he said was he didn't think</p> <p>16 that Lawson practiced the patent. That's what his</p> <p>17 reaction was.</p> <p>18 MS. STOLL-DeBELL: Yes.</p> <p>19 THE COURT: And you want to know why he</p> <p>20 thought that?</p> <p>21 MS. STOLL-DeBELL: Yes.</p> <p>22 THE COURT: You can consider that for the</p> <p>23 same limited purpose, ladies and gentlemen.</p> <p>24 BY MS. STOLL-DeBELL:</p> <p>25 Q Why did you think that Lawson was doing something</p>

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<p style="text-align: right;">1574</p> <p>CHRISTOPHERSON - DIRECT 1574</p> <p>1 different than what was in the patents?</p> <p>2 A Keep in mind, this is the first initial look at</p> <p>3 the patents. Some of the key things I was noticing</p> <p>4 were catalogs and what I was going back to was the</p> <p>5 state of where catalogs were back in the mid '90s or</p> <p>6 around the time the patents were filed. And in</p> <p>7 looking at screens, for instance, and they were</p> <p>8 mentioning page numbers from catalogs. Very much like</p> <p>9 a printed catalog except they turned it into an</p> <p>10 electronic form. That was the first thing.</p> <p>11 Q Why did you think that was different from what</p> <p>12 Lawson was doing?</p> <p>13 MR. ROBERTSON: Objection, Your Honor.</p> <p>14 There's a claim construction in this case with respect</p> <p>15 to catalog, and now we're asking the lay witness to</p> <p>16 opine on what his understanding of a catalog is. It</p> <p>17 doesn't have any relevancy to this case.</p> <p>18 THE COURT: You're getting into expert</p> <p>19 testimony, and he wasn't qualified as an expert, and</p> <p>20 what you're doing is you're offering it without a</p> <p>21 report or anything. And he's involved in in-house</p> <p>22 development of the systems and knows about them, and</p> <p>23 he can be qualified as a person who's an expert, but</p> <p>24 he wasn't.</p> <p>25 MS. STOLL-DeBELL: Your Honor, first of all,</p>	<p style="text-align: right;">1576</p> <p>CHRISTOPHERSON - DIRECT 1576</p> <p>1 Q Did you have a meeting with your team members</p> <p>2 regarding the lawsuit?</p> <p>3 A Yes.</p> <p>4 Q Did they agree with you?</p> <p>5 MR. ROBERTSON: Objection, Your Honor.</p> <p>6 MS. STOLL-DeBELL: Let me ask a better</p> <p>7 question.</p> <p>8 THE COURT: Yes. She's going to ask a</p> <p>9 different question.</p> <p>10 BY MS. STOLL-DeBELL:</p> <p>11 Q Did they agree with you that what Lawson was doing</p> <p>12 was different than the patents?</p> <p>13 MR. ROBERTSON: Objection, Your Honor. It</p> <p>14 still calls for a legal conclusion, and it's</p> <p>15 inappropriate expert testimony, and it's hearsay.</p> <p>16 THE COURT: It's sustained as hearsay. It's</p> <p>17 offered for the truth of the matter. So it doesn't</p> <p>18 have any nonhearsay use.</p> <p>19 BY MS. STOLL-DeBELL:</p> <p>20 Q Was it your recommendation that Lawson not make</p> <p>21 any changes --</p> <p>22 THE COURT: What did you do after this? Ask</p> <p>23 him. Let him testify.</p> <p>24 Q What did you do after you read the patents?</p> <p>25 A I'll provided recommendation that in my belief, my</p>
<p style="text-align: right;">1575</p> <p>CHRISTOPHERSON - DIRECT 1575</p> <p>1 he's just testifying in his capacity as an employee</p> <p>2 for Lawson. So I don't think there was a requirement</p> <p>3 for him to do an expert report.</p> <p>4 THE COURT: If he's giving expert testimony,</p> <p>5 if he's testifying as an expert for Lawson, he has to</p> <p>6 give a report. I don't care whether he's an employee</p> <p>7 or not.</p> <p>8 MS. STOLL-DeBELL: He wasn't professionally</p> <p>9 retained to give expert testimony.</p> <p>10 THE COURT: You can't have an employee</p> <p>11 professionally retained or otherwise give expert</p> <p>12 testimony without a report.</p> <p>13 MS. STOLL-DeBELL: Okay. I don't think it</p> <p>14 matters because I don't think I'm asking him for</p> <p>15 expert testimony. I want to -- I think it goes to the</p> <p>16 intent --</p> <p>17 THE COURT: You're just asking him whether he</p> <p>18 thought Lawson did something different.</p> <p>19 MS. STOLL-DeBELL: Yes, were they different.</p> <p>20 THE COURT: Okay. Why don't you ask him</p> <p>21 that?</p> <p>22 BY MS. STOLL-DeBELL:</p> <p>23 Q Did you think Lawson was doing something different</p> <p>24 than the patents?</p> <p>25 A Yes.</p>	<p style="text-align: right;">1577</p> <p>CHRISTOPHERSON - DIRECT 1577</p> <p>1 reading, we weren't doing that patent, first, and that</p> <p>2 they didn't need to do any changes with the software</p> <p>3 that was currently available.</p> <p>4 MS. STOLL-DeBELL: I have no further</p> <p>5 questions right now, Your Honor.</p> <p>6 THE COURT: All right. Cross-examination.</p> <p>7</p> <p>8 CROSS-EXAMINATION</p> <p>9 BY MR. ROBERTSON:</p> <p>10 Q Let's start with that last topic first if we</p> <p>11 could, Mr. Christopherson.</p> <p>12 A Sure.</p> <p>13 Q You did something else, didn't you, sir, besides</p> <p>14 making the recommendation that no changes would be</p> <p>15 made to the software?</p> <p>16 A I'm not sure what you're referring to, sir.</p> <p>17 Q Lawson went out and sought a legal opinion with</p> <p>18 respect to these patents, didn't they, sir?</p> <p>19 MS. STOLL-DeBELL: Objection, Your Honor. I</p> <p>20 don't think it's appropriate to get into whether we</p> <p>21 got an opinion or not. It's not relevant.</p> <p>22 MR. ROBERTSON: It goes to the whole intent</p> <p>23 issue, Your Honor, under the Broadcom v. Qualcomm</p> <p>24 case.</p> <p>25 MS. STOLL-DeBELL: Your Honor, it goes to</p>

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<p>1786</p> <p>1 instructions that we think will be appropriate.</p> <p>2 THE COURT: Several? How about one good one?</p> <p>3 MS. STOLL-DeBELL: One with many facets, Your</p> <p>4 Honor.</p> <p>5 THE COURT: Listen, I'm going to make you sit</p> <p>6 on the jury. I think every lawyer ought to have to</p> <p>7 sit on a jury and ought to have to listen to these</p> <p>8 instructions and try to figure out what do they mean.</p> <p>9 Because if you read them from the jury's standpoint,</p> <p>10 particularly these model instructions in the patent</p> <p>11 area, what they're doing is -- nobody has really made</p> <p>12 a real good effort to simplify them yet.</p> <p>13 Judge Spencer did better in SAP in</p> <p>14 simplifying the instructions than almost anybody I've</p> <p>15 ever seen, but there have with some legal changes</p> <p>16 since that time that prohibit me from adopting them</p> <p>17 full scale.</p> <p>18 All right. That takes care of them. I'm not</p> <p>19 real hopeful that you're going to get your evidence or</p> <p>20 I don't think you ought to be hopeful that you're</p> <p>21 going to get that evidence in, Mr. Robertson, because</p> <p>22 it seems to me it invites the jury to speculate and</p> <p>23 it's a problem, I think.</p> <p>24 MR. ROBERTSON: I understand, Your Honor.</p> <p>25 We're also concerned about prejudice given the fact we</p>	<p>1788</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>1787</p> <p>1 proffered that in good faith when it came up with the</p> <p>2 witness that he had a lay opinion as to his intent. I</p> <p>3 thought it was relevant then because his lay opinion</p> <p>4 as to the intent I didn't think was very persuasive,</p> <p>5 but if you go get a legal opinion on these issues that</p> <p>6 obviously involve the patents, and then you make the</p> <p>7 conscious decision not to disclose it, I think that's</p> <p>8 part of the circumstantial evidence they can consider.</p> <p>9 I understand Your Honor's ruling.</p> <p>10 THE COURT: I haven't rules.</p> <p>11 MR. ROBERTSON: I understand Your Honor's</p> <p>12 suggestion which way you might rule, but you're going</p> <p>13 to be fair and read the papers.</p> <p>14 THE COURT: I thought maybe if I gave you all</p> <p>15 some insight into where I was right now since we're on</p> <p>16 the fly that your arguments might be better informed</p> <p>17 in the morning, just as my thinking will be better</p> <p>18 informed if I read what you-all tendered for me to</p> <p>19 read.</p> <p>20 Thank you so much for the overnight present.</p> <p>21 I appreciate it.</p> <p>22</p> <p>23 (The proceedings were adjourned at 5:26 p.m.)</p> <p>24</p> <p>25</p>	

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<p style="text-align: right;">2797</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 5 ----- 6 ePLUS, INC. : Civil Action No.  : 3:09CV620 7 vs. :  : 8 LAWSON SOFTWARE, INC. : January 21, 2011  : 9 ----- 10 11 COMPLETE TRANSCRIPT OF THE JURY TRIAL 12 BEFORE THE HONORABLE ROBERT E. PAYNE 13 UNITED STATES DISTRICT JUDGE, AND A JURY 14 15 APPEARANCES: 16 Scott L. Robertson, Esquire 17 Michael G. Strapp, Esquire 18 Jennifer A. Albert, Esquire 19 David M. Young, Esquire 20 Goodwin Procter, LLP 21 901 New York Avenue NW 22 Suite 900 23 Washington, D.C. 20001 24 Craig T. Merritt, Esquire 25 Christian &amp; Barton, LLP 909 East Main Street Suite 1200 Richmond, Virginia 23219-3095 Counsel for the plaintiff  Peppy Peterson, RPR Official Court Reporter United States District Court</p>	<p style="text-align: right;">2799</p> <p>1 P R O C E E D I N G S 2 3 THE CLERK: Civil action number 3:09CV00620, ePlus, 4 Incorporated, versus Lawson Software, Incorporated. Mr. Scott 5 L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, and 6 Mr. Michael G. Strapp represent the plaintiffs. 7 Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms. 8 Kirstin L. Stoll-DeBell, Mr. William D. Schultz, and Ms. Rachel 9 Hughey represent the defendant. Are counsel ready to proceed? 10 MR. ROBERTSON: Yes, Your Honor. 11 MR. McDONALD: Yes, Your Honor. 12 THE COURT: All right. We'll take plaintiff's JMOL 13 motion first. 14 MR. ROBERTSON: Good morning, Your Honor. 15 THE COURT: Good morning. 16 MR. ROBERTSON: I'm going to be arguing plaintiff's 17 judgment as a matter of law with respect to infringement, and 18 Ms. Albert will be addressing plaintiff's judgment as a matter 19 of law with respect to the invalidity issues. 20 Your Honor, Rule 50 provides that judgment as a 21 matter of law may be granted when a reasonable jury would not 22 have a legally sufficient evidentiary basis to find for the 23 party Lawson on that issue. ePlus moves for JMOL that Lawson 24 infringes all the asserted claims of the patents-in-suit, both 25 directly and indirectly, both through inducement of</p>
<p style="text-align: right;">2798</p> <p>1 APPEARANCES: (cont'g) 2 Dabney J. Carr, IV, Esquire 3 Troutman Sanders, LLP 4 Troutman Sanders Building 5 1001 Haxall Point 6 Richmond, Virginia 23219 7 Daniel W. McDonald, Esquire 8 Kirstin L. Stoll-DeBell, Esquire 9 William D. Schultz, Esquire 10 Merchant &amp; Gould, PC 11 80 South Eighth Street 12 Suite 3200 13 Minneapolis, Minnesota 55402 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">2800</p> <p>1 infringement and contributory infringement. 2 I'm not going to go through all the asserted claims, 3 Your Honor. I know Your Honor is familiar with them, and that 4 would just take up too much time, and I know we're pressed for 5 time here this morning with the Court's schedule this 6 afternoon, but let me hit a high point, first start off by 7 saying, we contend that the defendants non-infringement case in 8 this proceeding has been really based on misdirection, that 9 they have ignored the Court's claim construction with respect 10 to catalog. They rewrote the provision for published by a 11 vendor to suit their manufactured non-infringement positions. 12 It required the Court, I think midcourse through this 13 case, to issue the instruction with respect to published by a 14 vendor to bring some clarity to what the Court intended when it 15 gave its instruction with respect to what a catalog is. 16 It did not mean, as the defendant contended, that the 17 item data associated with the catalog could not be selected -- 18 or had to be selected by the customer or modified or deleted or 19 reformatted or be an entire catalog. That was never intended 20 by the Court, and its revised published-by-a-vendor 21 construction made that clear, and I think the arguments made on 22 that, the non-infringement arguments that were based on that 23 have no sound footing in the record on this case. 24 We believe that the best evidence in this case has 25 come from, indeed, Lawson's own witnesses and documents. Mr.</p>

<p style="text-align: right;">2965</p> <p>1 THE COURT: Moving to 26, there is an objection</p> <p>2 there. I thought you all worked out a lot of stuff.</p> <p>3 Substantial progress you made -- who was it that represented</p> <p>4 there was substantial progress going on? You don't have to</p> <p>5 answer that question. You plead guilty?</p> <p>6 MR. MERRITT: I do. I was sent down the hall to</p> <p>7 check. I was assured, and they looked like they were working.</p> <p>8 THE COURT: All right, 26.</p> <p>9</p> <p>10 (Discussion off the record.)</p> <p>11</p> <p>12 THE COURT: Okay, 26.</p> <p>13 MR. ROBERTSON: Let me raise one issue, and then I'll</p> <p>14 let Lawson raise the other issues. The things that are struck</p> <p>15 here about -- I'm sorry, I'm down about --</p> <p>16 THE COURT: Let's go to about the eighth line down,</p> <p>17 acts that constitute.</p> <p>18 MS. STOLL-DeBELL: So, Your Honor, with that, I think</p> <p>19 the Federal Circuit held in DSU Medical Corporation that intent</p> <p>20 for indirect infringement requires an intent to cause the</p> <p>21 actual infringement, not the acts that constitute infringement.</p> <p>22 THE COURT: What is the difference?</p> <p>23 MS. STOLL-DeBELL: You'd have to actually know about</p> <p>24 a patent and intend to cause the infringement as opposed to</p> <p>25 intend to just cause something that you don't know is an</p>	<p style="text-align: right;">2967</p> <p>1 relying on this SEB case, Your Honor, which is an outlier case</p> <p>2 talking about deliberate indifference. The facts of that case</p> <p>3 are very different than what we are talking about here.</p> <p>4 In that case, the defendant actually copied the</p> <p>5 patentee's product. They sent it to their manufacturer, and</p> <p>6 they copied every feature of it. Then they went and had a</p> <p>7 patent infringement -- or an opinion done, and they didn't tell</p> <p>8 the patent attorney that they had copied the patentee's</p> <p>9 product.</p> <p>10 And in that case, the Federal Circuit found that they</p> <p>11 had acted with reckless disregard for the patent rights by</p> <p>12 copying the product and then having a search done and not</p> <p>13 telling their patent attorney that they copied it. In that</p> <p>14 case, the Federal Circuit found that they basically did know</p> <p>15 about the patent in that case because of those bad acts.</p> <p>16 We don't have those facts here, Your Honor, and I</p> <p>17 think this reckless disregard standard is confusing. As Mr.</p> <p>18 Robertson noted, the Supreme Court has granted cert on that</p> <p>19 case, and I just don't think it's good law, and I don't think</p> <p>20 it makes sense to put it in this case.</p> <p>21 MR. ROBERTSON: Your Honor, it is the Federal</p> <p>22 Circuit's most recent pronouncement on this case. They didn't</p> <p>23 announce the standard based on the facts. They announced the</p> <p>24 standard can be reckless disregard, and I did raise this with</p> <p>25 Your Honor before. A case that's on certiorari is still the law</p>
<p style="text-align: right;">2966</p> <p>1 infringement.</p> <p>2 So I just took out the acts that constitute, because</p> <p>3 that is the holding of the DSU Medical Corp. It was actually</p> <p>4 an en banc decision from the Federal Circuit to resolve a</p> <p>5 conflict in their law, and they held exactly that, that the</p> <p>6 intent is to cause --</p> <p>7 THE COURT: That's what the next clause says. It</p> <p>8 says -- you are not reading the whole thing. You are just</p> <p>9 editing out something. Cause the acts that constitute direct</p> <p>10 infringement, comma, that Lawson knew of the patent and Lawson</p> <p>11 knew or should have known that its actions would lead to actual</p> <p>12 infringement. I mean, that seems to me to do --</p> <p>13 MS. STOLL-DeBELL: I'll withdraw that redline.</p> <p>14 THE COURT: Okay.</p> <p>15 MS. STOLL-DeBELL: I'll put my horse back in the</p> <p>16 barn, Your Honor.</p> <p>17 THE COURT: That's a good thing to do. A good</p> <p>18 horsewoman knows when to stable a mount.</p> <p>19 All right, now, do you want to add the underscored</p> <p>20 part here in your suggestion, Ms. Stoll-DeBell?</p> <p>21 MS. STOLL-DeBELL: Yes, sir.</p> <p>22 MR. ROBERTSON: I mean this appears argumentative to</p> <p>23 me, Your Honor, and I don't know. Is there a case that says</p> <p>24 this that you want to rely on?</p> <p>25 MS. STOLL-DeBELL: I think to start off, they are</p>	<p style="text-align: right;">2968</p> <p>1 of the land until and -- if and until the Supreme Court</p> <p>2 overturns it.</p> <p>3 MS. STOLL-DeBELL: It is one case, Your Honor,</p> <p>4 talking about --</p> <p>5 THE COURT: Excuse me. Reckless disregard has always</p> <p>6 been -- as far as I know, the concept of willful blindness,</p> <p>7 deliberate indifference, all of those meld together and are</p> <p>8 components that typically, in the law of intent, have been</p> <p>9 considered -- have been appropriately considered as factors in</p> <p>10 the analysis.</p> <p>11 MS. STOLL-DeBELL: Your Honor, that may be true, but</p> <p>12 it doesn't fit the facts of this case. We don't have any</p> <p>13 copying here. In fact, as you know, Lawson has been selling</p> <p>14 these products since the 1980s. There's just no facts that are</p> <p>15 even anywhere close to the facts that they looked at in the SEB</p> <p>16 case that would support instructing the jury on reckless</p> <p>17 disregard here.</p> <p>18 THE COURT: This case says, this Court has made</p> <p>19 clear, however, that inducement requires a showing of specific</p> <p>20 intent to encourage another's infringement. As other Courts</p> <p>21 have observed, specific intent in the civil context is not so</p> <p>22 narrow as to allow an accused wrongdoer to actively disregard a</p> <p>23 known risk that an element of the offense exists.</p> <p>24 And isn't that -- this Court notes that the Supreme</p> <p>25 Court has indicated, in a different civil context, that</p>

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<p>3049</p> <p>1 MR. ROBERTSON: I apologize. I will get that</p> <p>2 to you.</p> <p>3 THE COURT: Get it to him, and we'll deal</p> <p>4 with that.</p> <p>5 All right. Now, we have a verdict form. So</p> <p>6 we're going to take a break.</p> <p>7</p> <p>8 (Recess taken.)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>3051</p> <p>1 reversed, we don't want that Lawson system foundation and</p> <p>2 process flow included on the verdict form to indicate that in</p> <p>3 any way they should be included in an injunction or damages.</p> <p>4 THE COURT: Why wouldn't they be if they infringed?</p> <p>5 The Lawson system foundation/process flow has been defined to</p> <p>6 be the inventory control, requisition, and purchase order</p> <p>7 modules.</p> <p>8 MR. CARR: That's incorrect, Your Honor. Those are</p> <p>9 the foundations upon which those three modules, IC, RQ, and PO</p> <p>10 set. That is the LSF and process flow are the foundation below</p> <p>11 those modules which Dr. Weaver has not asserted infringe, and I</p> <p>12 don't think there's any disagreement with that.</p> <p>13 MR. ROBERTSON: No, there is disagreement about that.</p> <p>14 THE COURT: Give me that yellow chart. Give me that</p> <p>15 slide that he testified from.</p> <p>16 MR. ROBERTSON: We might not have it -- I don't know</p> <p>17 that we have that here. The testimony was, Your Honor, that</p> <p>18 the core technology, for example, inventory control,</p> <p>19 requisition, and purchase order are necessary to run on top of</p> <p>20 Lawson system foundation and process flow. It's undisputed.</p> <p>21 Even Lawson's witnesses testified you can't run those three</p> <p>22 modules without having it on LSF and process flow, and that's</p> <p>23 part of the infringing configurations. That's how the</p> <p>24 testimony came in through Dr. Weaver in each instance.</p> <p>25 Remember that bill always started out --</p>
<p>3050</p> <p>1 THE COURT: All right. Do we have the verdict forms?</p> <p>2 I've got my copy. Are you all in agreement on these forms?</p> <p>3 MR. CARR: Your Honor, we have a few changes to the,</p> <p>4 I guess it's ePlus's second revised proposed verdict form, some</p> <p>5 of which we are in agreement on and some of which we are not.</p> <p>6 Do you have it in front of you?</p> <p>7 THE COURT: Yes.</p> <p>8 MR. CARR: Looking where it says configuration number</p> <p>9 one, core S3 procurement system, do you see that?</p> <p>10 THE COURT: Yes.</p> <p>11 MR. CARR: What we are in agreement on in that</p> <p>12 description is that the words at least should come out, and the</p> <p>13 reason for that is because it would otherwise be duplicative</p> <p>14 because some of the later configurations have at least those</p> <p>15 three things. So we're in agreement on that.</p> <p>16 We believe that the words Lawson system foundation,</p> <p>17 LSF/process flow, should also come out, because those modules</p> <p>18 are not accused of infringing and that if it reads just</p> <p>19 inventory control requisition and purchase order modules, that</p> <p>20 is simpler and more straightforward for the jury, and that's</p> <p>21 the way it ought to read.</p> <p>22 EPlus disagrees with that. One concern we have is</p> <p>23 that if the jury were to find against Lawson, and we are</p> <p>24 talking about an injunction in a month or six weeks or whenever</p> <p>25 it is, or we're talking about damages if that were to get</p>	<p>3052</p> <p>1 THE COURT: Basically what you're talking about is</p> <p>2 the Lawson system foundation process flow operating with</p> <p>3 inventory control, requisition, and purchase order modules;</p> <p>4 right?</p> <p>5 MR. ROBERTSON: That's right. That's an infringing</p> <p>6 configuration. Now, let me just -- I did talk --</p> <p>7 THE COURT: Why can't we put operating with and be</p> <p>8 done with it.</p> <p>9 MR. CARR: That's fine with us, Your Honor, but Mr.</p> <p>10 Robertson was going to say something.</p> <p>11 MR. ROBERTSON: I want to make a representation that</p> <p>12 the Lawson system foundation and process flow can operate with</p> <p>13 other Lawson software solutions, and we're not looking to</p> <p>14 enjoin Lawson system foundation and process flow when it's</p> <p>15 operating with those other modules if it's not operating in an</p> <p>16 infringing configuration. Remember, you can put a lot of</p> <p>17 different modules on that foundation.</p> <p>18 THE COURT: Won't, after a comma, flow, comma,</p> <p>19 operating with inventory control, requisition, and purchase</p> <p>20 order.</p> <p>21 MR. ROBERTSON: Just so that there's --</p> <p>22 THE COURT: Won't that do it?</p> <p>23 MR. ROBERTSON: That should do it.</p> <p>24 THE COURT: Do you agree?</p> <p>25 MR. CARR: Yes, Your Honor, but I did want Mr.</p>



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<p style="text-align: right;">3053</p> <p>1 Robertson to say what he said so later on there's no</p> <p>2 misunderstanding about it.</p> <p>3 THE COURT: Yes, I can understand why you wanted that</p> <p>4 said.</p> <p>5 MR. CARR: That way, you would have to make that same</p> <p>6 change on configuration two, add operating, take out at least.</p> <p>7 THE COURT: Wait a minute, take out least, and</p> <p>8 everybody's in agreement with that?</p> <p>9 MR. ROBERTSON: Yes, sir.</p> <p>10 MR. CARR: Add operating before the word with. And</p> <p>11 you'd have to do the same thing for each of the configurations</p> <p>12 that are listed.</p> <p>13 THE COURT: This is a little confusing. Operating</p> <p>14 with inventory control, requisition, and purchase order</p> <p>15 modules, and RSS; right?</p> <p>16 MR. CARR: Well, the core three procurement system</p> <p>17 would be inside the parentheses. The core three is just</p> <p>18 Lawson's system foundation, LSF/process flow, operating with</p> <p>19 inventory control, requisition, purchase order in parentheses.</p> <p>20 THE COURT: What about the phrase I'm talking about</p> <p>21 in configuration two? It's with requisition service. It</p> <p>22 should be and requisition service; is that right?</p> <p>23 MR. ROBERTSON: Yes, sir.</p> <p>24 MR. CARR: That's fine.</p> <p>25 THE COURT: Won't that solve the problem?</p>	<p style="text-align: right;">3055</p> <p>1 MR. CARR: So in combination with instead of</p> <p>2 operating with throughout.</p> <p>3 THE COURT: Yes.</p> <p>4 MR. CARR: Your Honor, would you like us to just,</p> <p>5 once we're through all this, just send you another one?</p> <p>6 THE COURT: I just want to make sure I've got, I know</p> <p>7 what we're doing here. I'm going to let you all do the</p> <p>8 mechanics on it. In combination with on this one. That brings</p> <p>9 us to five. Do we do the same thing?</p> <p>10 MR. CARR: Yes, Your Honor.</p> <p>11 THE COURT: Take out at least. Just to follow</p> <p>12 grammatical structure, if you go back to the one dealing with</p> <p>13 configuration three, it should be after modules, it should be</p> <p>14 comma, instead of and, and then you pick up with and punchout.</p> <p>15 And then the same thing so you don't -- I think it can be</p> <p>16 confusing, and you put and electronic data interchange in</p> <p>17 number four, and then you come down to number five, and you say</p> <p>18 purchase order modules, comma, requisition service or RSS,</p> <p>19 comma, punchout, and electronic interchange, data interchange,</p> <p>20 all right, and then we've -- then that's it, isn't it?</p> <p>21 MR. CARR: Then we have invalidity.</p> <p>22 THE COURT: No, I mean on the infringement.</p> <p>23 MR. CARR: Yes, that's it.</p> <p>24 THE COURT: Okay.</p> <p>25 MR. CARR: On the invalidity, we simplified this one.</p>
<p style="text-align: right;">3054</p> <p>1 MR. ROBERTSON: Yes, sir.</p> <p>2 THE COURT: All right. We've got that taken care of.</p> <p>3 MR. CARR: The same on configuration number three.</p> <p>4 THE COURT: At least comes out.</p> <p>5 MR. ROBERTSON: Yes. And then the with changed to</p> <p>6 and again.</p> <p>7 THE COURT: And punchout -- yeah, and requisition</p> <p>8 service and punchout; right?</p> <p>9 MR. ROBERTSON: Yes.</p> <p>10 THE COURT: Four?</p> <p>11 MR. CARR: Same changes for four.</p> <p>12 THE COURT: Wait a minute. Using the word operating,</p> <p>13 does that eliminate the whole question of capability?</p> <p>14 MR. ROBERTSON: That's a good point, Your Honor.</p> <p>15 THE COURT: Or does it confuse to say -- maybe it's</p> <p>16 just better to take operating out and just have with.</p> <p>17 MR. ROBERTSON: I think that's right.</p> <p>18 MR. CARR: We are back to where we were. We didn't</p> <p>19 think that it should be -- that you should mention Lawson</p> <p>20 system foundation or LSF or process flow at all unless you had</p> <p>21 operating with it.</p> <p>22 THE COURT: Well, that's because you take the view --</p> <p>23 MR. ROBERTSON: How about in combination with?</p> <p>24 MR. CARR: That's fine.</p> <p>25 THE COURT: In combination with.</p>	<p style="text-align: right;">3056</p> <p>1 We still have one area of disagreement. We're just going to</p> <p>2 have one question, so amending number one, we'll just cut out</p> <p>3 -- it won't have the number one. It will say, do you find that</p> <p>4 Lawson has proven by clear and convincing evidence that any of</p> <p>5 the following claims are invalid, and then it's going to list</p> <p>6 the patents and the claims with the yes and no just as it was</p> <p>7 done in the infringement questions. I will stop there, and</p> <p>8 then there's more.</p> <p>9 THE COURT: All right, okay. So that would take care</p> <p>10 of yes and no of each one.</p> <p>11 MR. CARR: Right.</p> <p>12 THE COURT: You all disagree with that, you say?</p> <p>13 MR. CARR: No, we agree with that part. The part</p> <p>14 that we're in disagreement is this: ePlus wants after each</p> <p>15 claim what they have here on the verdict form, if you answered</p> <p>16 yes, list the prior art references that you have found</p> <p>17 invalidates the claim, and as you noted the other day, you</p> <p>18 didn't think that was appropriate, and we agree and just don't</p> <p>19 think it should be on the verdict form.</p> <p>20 THE COURT: Why is that on the verdict form?</p> <p>21 MR. ROBERTSON: Well, for two reasons, Your Honor.</p> <p>22 One, in fairness, we've had to break out all the infringing</p> <p>23 configurations so the jury has with specificity, can say which</p> <p>24 claim applies to which configuration. We'd like to know which</p> <p>25 prior art would apply to invalidate which claim, and here why:</p>

1 arguments, Your Honor?

2 THE COURT: We told the jury to come back at 9:00.

3 So you're going to get those instructions over here by -- I

4 need them by four o'clock tomorrow afternoon. So if that lets

5 you sleep a little later, have at it. Does that take care of

6 everything? I don't intend to clean up night.

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8 (Court adjourned.)

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<p>3078</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 5 ----- 6 ePLUS, INC. : Civil Action No. 7 : 3:09CV620 8 vs. : 9 : 10 : 11 : 12 : 13 : 14 : 15 : 16 : 17 : 18 : 19 : 20 : 21 : 22 : 23 : 24 : 25 : COMPLETE TRANSCRIPT OF THE JURY TRIAL BEFORE THE HONORABLE ROBERT E. PAYNE UNITED STATES DISTRICT JUDGE, AND A JURY APPEARANCES: Scott L. Robertson, Esquire Michael G. Strapp, Esquire David M. Young, Esquire Goodwin Procter, LLP 901 New York Avenue NW Suite 900 Washington, D.C. 20001 Craig T. Merritt, Esquire Christian &amp; Barton, LLP 909 East Main Street Suite 1200 Richmond, Virginia 23219-3095 Counsel for the plaintiff Peppy Peterson, RPR Official Court Reporter United States District Court</p>	<p>3080</p> <p>1 PROCEEDINGS 2 3 THE CLERK: Civil action number 3:09CV00620, ePlus, 4 Incorporated versus Lawson Software, Incorporated. Mr. Scott 5 L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, and 6 Mr. Michael G. Strapp represent the plaintiff. 7 Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms. 8 Kirstin L. Stoll-DeBell, Mr. William D. Schultz represent the 9 defendant. Are counsel ready to proceed? 10 MR. ROBERTSON: Yes, Your Honor. 11 MR. McDONALD: Yes, Your Honor. 12 THE COURT: All right. I was very sorry to hear 13 about Ms. Albert's father passing away. You all both wrote 14 letters about it. I don't see the point in bringing that to 15 the attention the jury. Do either one of you? 16 In the old days, when people didn't do what they were 17 supposed to do, they got keelhauled. I'm about ready to 18 institute that procedure here. It's time for the jury to get 19 going, and I've had to read all this stuff now. I told you 20 what to do about this verdict form, and it was pretty easy, and 21 it's unnecessary to go through all this stuff. 22 Now, apparently we're going to have to revise it 23 anyway because -- and some of the instructions. What 24 instructions have to be revised because Lawson is not 25 contending that the RIMS brochure is prior art? Which one is</p>
<p>3079</p> <p>1 APPEARANCES: (cont'g) 2 Dabney J. Carr, IV, Esquire 3 Troutman Sanders, LLP 4 Troutman Sanders Building 5 1001 Haxall Point 6 Richmond, Virginia 23219 7 Daniel W. McDonald, Esquire 8 Kirstin L. Stoll-DeBell, Esquire 9 William D. Schultz, Esquire 10 Merchant &amp; Gould, PC 11 80 South Eighth Street 12 Suite 3200 13 Minneapolis, Minnesota 55402 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>3081</p> <p>1 arguing? 2 MR. YOUNG: Your Honor, David Young for ePlus. It's 3 instruction 3-A that was submitted to the Court over the 4 weekend. It lists as I think reference number three, RIMS 5 brochure, and that would have to come out now because it 6 appears that Lawson does not have that as an anticipated 7 reference on its own verdict form. 8 THE COURT: Is that right? 9 MR. McDONALD: Yes, that's right, Your Honor. 10 THE COURT: So I suppose I need to tell the jury 11 simply to disregard any testimony about the RIMS brochure as 12 prior art. 13 MR. McDONALD: No, it not anticipatory prior art 14 meaning it's not all by itself anticipating a claim. We're 15 still using it for obviousness and support for the on sale, the 16 RIMS as prior art and 102(a) and (b), but the brochure, all by 17 itself, we're not contending is an anticipating reference, but 18 it would be used to support number one in the instruction which 19 is the Fisher RIMS system as prior art. 20 THE COURT: What do you mean, to be used to support? 21 If you're going to use it -- 22 MR. McDONALD: It's evidence of the Fisher RIMS 23 system as it was being sold and -- 24 THE COURT: Well, if it's evidence of it, it comes 25 out of 39, too, because you're not contending that it is</p>

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<p>3254</p> <p>1 results if the defendant, here, Lawson, induces another to  2 infringe a patent or contributes to the infringement of a  3 patent by another person. I'm going to explain those two types  4 of infringement now.</p> <p>5 Lawson would be liable for directly infringing  6 ePlus's patents if you find that ePlus has proven by a  7 preponderance of the evidence that Lawson itself has made,  8 used, offered to sell, sold, or imported into the United States  9 the invention defined in any claim of the patents. Then that  10 claim has been infringed if they proved that by a preponderance  11 of the evidence.</p> <p>12 Now, remember that someone can directly infringe a  13 patent without knowing that what they are doing is an  14 infringement of the patent. You don't have to know you are  15 infringing the patent to infringe it. You either do or you  16 don't. So you can directly infringe a patent even though you  17 believe in good faith that what you are doing is not an  18 infringement of the patent.</p> <p>19 The issue is does it or doesn't it, not what state of  20 mind the direct infringer had. In every infringement analysis,  21 the language of the claims as well as the nature of the accused  22 system or method dictates whether infringement has occurred.  23 To infringe a claim that recites capability and not actual  24 operation, an accused system or method need only be capable of  25 operating in the described mode. Thus, depending on the</p>	<p>3256</p> <p>1 state of mind, i.e., that they actively and knowingly aided and  2 abetted the indirect infringement by their customers. ePlus,  3 thus, must show that Lawson actually intended to cause the acts  4 that constitute infringement and that Lawson knew of the patent  5 and that Lawson knew or should have known that its actions  6 would lead to actual infringement.</p> <p>7 Knowledge of the patent may be established by a  8 finding that Lawson had actual knowledge of the patent or that  9 Lawson deliberately disregarded a known risk that ePlus had a  10 protective patent. Intent to cause the acts that constitute  11 direct infringement may be demonstrated by evidence of active  12 steps taken to encourage direct infringement such as  13 advertising an infringing use or instructing someone on how to  14 engage in the infringing use.</p> <p>15 It is not necessary to show that Lawson has directly  16 infringed as long as you find that someone, here the Lawson  17 customers, directly infringed and that Lawson did the things  18 that I said constituted inducement. If there's no direct  19 infringement by anyone, there can be no induced infringement,  20 and, of course, induced infringement must also be assessed on a  21 claim-by-claim basis.</p> <p>22 Now, just to review that, what you're going to have  23 to do here is look and see if Lawson's systems, all or any of  24 them, actually infringed the patent when they were used by the  25 customers of Lawson. Then you have to decide whether Lawson</p>
<p>3255</p> <p>1 claims, an accused system or method may be found to infringe if  2 it is reasonably capable of satisfying the claim elements or  3 limitations even though the system or method may also be  4 capable of non-infringing modes of operation. The fact that a  5 product or process may operate in a manner that does not  6 infringe is not a defense to a claim of infringement against  7 Lawson if its system is also reasonably capable of operating in  8 a manner that satisfies the claim elements.</p> <p>9 Now, Lawson -- I mean ePlus also alleges that Lawson  10 has actively induced other people to infringe the  11 patents-in-suit. In particular, who are they alleged to have  12 induced? The Lawson customers in this case. That's what it's  13 about.</p> <p>14 To show induced infringement, ePlus has to prove by a  15 preponderance of the evidence that someone, here, Lawson's  16 customers, have directly infringed the ePlus patents, and that  17 Lawson -- so they have to show that the customers directly  18 infringe. And remember, it doesn't make any difference whether  19 the customers knew or didn't know that they were infringing,  20 because if you infringe, you infringe whether you know it or  21 not. But they also, ePlus has to prove by a preponderance of  22 the evidence that Lawson has actively and knowingly aided and  23 abetted that direct infringement.</p> <p>24 So here, in order to find that Lawson has induced  25 somebody else to infringe, you do have to consider Lawson's</p>	<p>3257</p> <p>1 actively and knowingly helped -- that's called aiding and  2 abetting -- the direct infringement, and there was evidence  3 that you have to decide about who was involved in talking to  4 the customers, what they told the customers. You consider all  5 of that as well, but remember that in order to prove by -- I  6 mean to prove induced infringement, ePlus has to show that  7 Lawson actually intended to cause the acts -- and I'm reviewing  8 this little part of the instructions -- that constitute  9 infringement, that Lawson knew of the patent and that Lawson  10 knew or should have known that its actions would lead to actual  11 infringement. Pay attention to the rest of that instruction as  12 well, but I wanted to recapitulate for you that.</p> <p>13 Now, there's another kind of indirect infringement  14 that's involved, and that's called contributory infringement.  15 ePlus also argues that Lawson is liable for this contributory  16 infringement by contributing to the direct infringement of  17 ePlus by third parties, again, the Lawson customers.</p> <p>18 As with direct infringement, you have to determine  19 contributory infringement on a claim-by-claim basis. Lawson is  20 liable for contributory infringement of a claim if ePlus proves  21 by a preponderance of the evidence, one, that Lawson sells,  22 offers to sell, or imports within the United States a  23 component of a Lawson system or apparatus for use in a process  24 during the time the patent is in force.</p> <p>25 I don't think there's any issue here, is there, about</p>

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<p style="text-align: right;">3298</p> <p style="text-align: center;">3298</p> <p>1 (Jury in.)</p> <p>2</p> <p>3 THE COURT: The jury has decided that it would like</p> <p>4 to return home for the evening and then return in the morning</p> <p>5 and deliberate. What is your pleasure on the time to</p> <p>6 deliberate? Do you want to start at 9:00, start at 9:30?</p> <p>7 Nine o'clock we'll be here and have stuff ready for</p> <p>8 you, and you be ready and you can have -- you can take whatever</p> <p>9 time you feel like you need to deliberate. If you leave your</p> <p>10 notebooks the way you usually do, Mr. Neal will take care of</p> <p>11 them. Thank you. Drive carefully.</p> <p>12</p> <p>13 (Jury out.)</p> <p>14</p> <p>15 THE COURT: Have all these transcripts and these</p> <p>16 things -- you've got everything you need; right?</p> <p>17 MR. STRAPP: Yes.</p> <p>18 MR. CARR: I believe so.</p> <p>19 THE COURT: One thing I need for you all to do is to</p> <p>20 see if there's anything that needs to be cleaned up that I need</p> <p>21 to decide. For example, they've got these motions that have</p> <p>22 been filed yesterday -- this morning or yesterday. I don't</p> <p>23 know what -- by Lawson.</p> <p>24 I need a briefing schedule on them and see what I'm</p> <p>25 supposed to do, and that means you all need to get moving and</p>	<p style="text-align: right;">3300</p> <p style="text-align: center;">3300</p> <p>1 least two attorneys here at all times so I can be reached by</p> <p>2 phone. I'm just right down here at the Hilton Garden Inn, so I</p> <p>3 can be here in four minutes.</p> <p>4 THE COURT: Do you have to trade shoes or can you --</p> <p>5 MR. ROBERTSON: I come equipped. I will be right</p> <p>6 over here pronto, but we'll have somebody here at all times.</p> <p>7 THE COURT: That's fine.</p> <p>8 MR. ROBERTSON: All right. Thank you.</p> <p>9 THE COURT: Now, is he coming back? Mr. McDonald or</p> <p>10 Ms. Stoll-DeBell?</p> <p>11 MR. CARR: As far as I know, he's not coming back.</p> <p>12 THE COURT: Well, then, I know not to schedule any</p> <p>13 arguments, I guess, until I'm certain. All right. I guess</p> <p>14 that solves it for now. Thank you very much. We'll be in</p> <p>15 adjournment.</p> <p>16</p> <p>17 (Court adjourned.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">3299</p> <p style="text-align: center;">3299</p> <p>1 decide how you want to proceed, little things like that so we</p> <p>2 can get that sorted out. I'd like to get all this done just as</p> <p>3 soon as I can.</p> <p>4 MR. ROBERTSON: I'll call Mr. McDonald tomorrow once</p> <p>5 he gets back to Minnesota. I understand he's gone back.</p> <p>6 THE COURT: He's what?</p> <p>7 MR. ROBERTSON: I'll call Mr. McDonald tomorrow in</p> <p>8 Minnesota. I know he's traveling --</p> <p>9 THE COURT: He's in Minnesota?</p> <p>10 MR. CARR: He is leaving this evening, yes.</p> <p>11 THE COURT: Are you fully empowered?</p> <p>12 MR. CARR: Yes, sir.</p> <p>13 MR. ROBERTSON: I'll just --</p> <p>14 THE COURT: Does he understand that the juries have a</p> <p>15 lot of questions sometimes?</p> <p>16 MR. CARR: He does.</p> <p>17 THE COURT: Okay.</p> <p>18 MR. ROBERTSON: I'll work out a briefing schedule,</p> <p>19 Your Honor, and we'll take care of it in short order. Maybe we</p> <p>20 can decide some of things have been mooted by some of Your</p> <p>21 Honor's rulings.</p> <p>22 THE COURT: They very well may have. I don't know</p> <p>23 the answer to that. Some of them may not, but I want to make</p> <p>24 sure we get it done.</p> <p>25 MR. ROBERTSON: Your Honor, I intend on having at</p>	